

OFFICIAL INFORMATIONCONFIDENTIAL**EVIDENCE CODE SECTION 1040
INTRADEPARTMENTAL CORRESPONDENCE**

DATE: July 7, 2020

TO: Honorable Board of Police Commissioners

FROM: Inspector General

SUBJECT: OFFICER-INVOLVED SHOOTING 039-19 FOR 7/14/20 CLOSED-
SESSION AGENDA

<u>Division</u>	<u>Date</u>	<u>Time</u>	<u>Duty-On (X) Off ()</u>	<u>Uniform-Yes (X) No ()</u>
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Pacific	8/14/19	5:50 p.m.		
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<u>Officer(s) Involved in Use of Force</u>	<u>Length of Service</u>
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Concetti, J./PO II	3 years, 9 months
Antalek, D./PO II	3 years, 3 months
Spraggins, B./PO II	2 years, 5 months
Robles, A./PO II	1 year, 10 months

Total Involved Officer(s)

2 x Sgt. I
8 x PO II

<u>Suspect(s)</u>	<u>Deceased ()</u>	<u>Wounded (X)</u>	<u>Non-Hit ()</u>
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John Sylvester Penny: Black Male, 37 years of age.

COP Recommendations

Tactics – Administrative Disapproval Sergeant Azmy. Tactical Debrief, Sergeant Park, Officers Antalek, Robles, Aziz, Concetti, Estrada, Graciano, Lara, and Spraggins.

Drawing/Exhibiting – In Policy, No Further Action, Officers Robles, Antalek, Spraggins, Lara, Concetti, Graciano, and Estrada.

Less-Lethal Use of Force – In Policy, No Further Action, Officers Antalek, Spraggins, and Robles.

Lethal Use of Force – In Policy, No Further Action, Officer Concetti.

IG Recommendations

Tactics – Same as COP.

Drawing/Exhibiting – Same as COP.

Non-Lethal Use of Force – Same as COP.

Lethal Use of Force – *Out of Policy, Officer Concetti.*

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INVESTIGATION

Synopsis: On Wednesday, August 14, 2019, Pacific Area officers responded to a radio call for a screaming man. Upon their arrival, the officers observed the suspect holding a glass bottle and a metal padlock. The officers ordered the suspect to put down the objects, but he did not comply with their commands. One officer utilized a TASER; which was ineffective. The suspect ultimately picked up a wooden board and advanced toward the officers resulting in an Officer-Involved Shooting (OIS).

Annotated Force Investigation Division (FID) Incident Summary¹

On Wednesday, August 14, 2019, at approximately 0930 hours, Witness Amanda Lester stated that she observed the suspect, later identified as John Penny, and an unidentified female engaging in possible narcotic activity outside of her residence.² According to Lester, Penny handed the female an object, which she placed into a pipe. The female then began smoking, what Lester believed to be cocaine base, from the pipe.

According to Lester, she approached the pair and asked them to stop the activity. Penny apologized to Lester. Lester reported the incident to the property owner, later identified as Witness Jack Susser. According to Lester, Penny had been living outside in the parking area for approximately five months, with Susser's permission.

Note: Witness Lester took three photographs of Penny and the unidentified female from her kitchen window, while they were standing in his encampment/storage area, engaging in narcotics activity. Those photographs are stored under Control No. 729437.

Witness Lester's residence was located mid-block on the north side of Thornton Court, between Pacific Avenue and Speedway, in the Venice Beach Community. Her apartment was on the second floor and had a balcony that faced Thornton Court and a kitchen window that faced in an easterly direction toward Pacific Avenue.

According to Lester, she returned home with her roommate, Witness Rachel Pizaruck, at approximately 1600 hours. Upon their arrival, Lester and Pizaruck observed Susser

¹ The Incident Summary presented here is reproduced from FID's report regarding this case and is supplemented with annotations by the OIG. All OIG annotations are referenced as an "OIG Note." All other references and citations in the reproduced FID Incident Summary (e.g., Investigators' Notes or Addenda Items) are reproduced directly from FID's report. Unless otherwise stated, all information provided in OIG annotations is derived from FID's investigation of this incident.

² John Penny, male Black, 5 feet, 11 inches tall, 145 pounds, with a date of birth of May 12, 1982.

having a conversation with Penny in the parking area. Shortly thereafter, Penny started behaving erratically and was drinking from a bottle of liquor. According to Lester and Pizaruck, Penny began running around, hitting trashcans, throwing objects and screaming. At one point, Lester heard Penny yell, "Call the cops on me; I don't care."³

According to Susser, he granted Penny permission to store items and sleep in the parking area adjacent to his residence on Thornton Court and Penny had been doing so off and on for approximately one year. On the day of this incident, he was notified by his tenants (Witnesses Lester and Pizaruck) that Penny was using narcotics. Later that afternoon, Susser heard Penny shouting in the alleyway. He went outside and discovered that Penny had been drinking alcohol and appeared to be intoxicated. According to Susser, he attempted to convince Penny to lay down and go to sleep; however, his efforts were unsuccessful.

At approximately at 1739 hours, Witness David Cantor was inside his residence located on the south side of Thornton Court, west of Pacific Avenue, when he heard a man yelling, "Don't shoot me, don't shoot me."⁴ Cantor called 9-1-1 and reported the incident.

At the time of the incident, Cantor had one security camera affixed to the exterior of his residence, located at 47 Park Avenue. It was on the north wall, beneath the second-floor window, facing Thornton Court. After calling 9-1-1, Cantor looked at the security monitor inside of his residence. He observed Penny jumping up and down, hitting objects, and screaming while running back and forth along Thornton Court (Investigators' Note No. 1).⁵

At approximately 1743:42 hours, Communications Division (CD) broadcast on Pacific Frequency, "Pacific Units and 14X16, 14X16, screaming man, Thornton and Pacific, Thornton and Pacific, between Pacific and Speedway in the alley off of Thornton, Code-3, Incident 190814005092, in RD 1412."

The radio call was assigned to Pacific Patrol Division, Police Officers II Adrian Gonzalez, Serial No. 40214 and Christopher Castro, Serial No. 42392, Unit 14X16.⁶ They asked CD if there was a Venice Beach Detail (VBD) unit, within a closer proximity to the call that was available to handle it.

³ Witness Lester's statement, Page 6, Line 9.

⁴ Witness Cantor's statement, Page 4, Line 6.

⁵ According to Cantor, he did not know Penny.

⁶ Officer Adrian Gonzalez was not witness to the Categorical Use of Force nor was he significantly involved. Therefore, he was not interviewed for this investigation.

Pacific Area, VBD, Police Officers II Daniel Antalek, Serial No. 42536 (driver) and Antonio Robles, Serial No. 43260 (passenger), Unit 14FB2, advised CD they would handle the call. Both officers activated their Body Worn Video (BWV) and responded to the location Code 3.⁷

Note: The location of the radio call was within the Venice Beach Community and was approximately two blocks east of the beach. Thornton Court ran east/west and resembled an alleyway. The following image is an overview of the area surrounding the location of the radio call.⁸

According to Witnesses Lester and Pizaruck, they heard sirens and looked out their kitchen window. According to Pizaruck, Penny ran toward Pacific Avenue, in the direction of the sirens, while holding the bottle of liquor in his hand.

According to Witness Susser, he heard sirens while he was speaking with Penny. Penny then stated, "Oh, it's the police. They're coming."⁹ Penny then started running toward Pacific Avenue. According to Susser, "I was trying to tell him, don't bother the police. Don't go that way. Just turn around and come back and sleep it off. If they're here for you, you'll know about it."¹⁰ Penny did not follow Susser's advice and continued running toward Pacific Avenue.

At approximately 1748:22 hours, Officers Antalek and Robles arrived at scene. As the officers drove north on Pacific Avenue, their DICV captured Penny standing on Thornton Court just west of Pacific Avenue. According to Officer Antalek, Penny was yelling which caused him to believe the Penny may be the subject of the radio call. Officer Robles went Code Six via his Mobile Data Computer (MDC).

⁷ Officer Antalek, 3 years and 3 months with the Department, 30 years of age, 5 feet 10 inches tall, 210 pounds. Officer Robles, 1 year 10 months with the Department, 26 years of age, 5 feet 8 inches tall, 175 pounds. Officer Robles was on loan to the VBD from Hollenbeck Patrol Division. Officers Antalek and Robles were wearing their ballistic vests, carrying Department approved pistols, their TASERS, canisters of Oleoresin Capsicum Spray (OC Spray), Hobble Restraint Devices (HRD) and two pairs of handcuffs each on their persons. In addition, Officer Antalek carried a collapsible baton. Both officers were wearing BWV and had their PR-24's and a 40-millimeter Less-Lethal Launcher stored within their police vehicle. This was Officers Antalek and Robles' second time working together as partners. According to Officers Antalek and Robles, prior to this incident, he and Officer Robles discussed tactics and use of force scenarios. Officer Antalek was the designated lethal officer if necessary.

⁸ Consistent with standard practice, the OIG has removed the hyperlinks from this report as they would be inaccessible. The hyperlinks remain accessible in the FID report on this incident.

⁹ Witness Susser's statement, Page 7, Line 7.

¹⁰ Witness Susser's statement, Page 30, Lines 13-16.

Note: According to Officer Robles, Penny was standing in the middle of the street, walking in and out of traffic.

According to Officer Robles, he broadcast to CD that they were Code Six when they were approximately one block away from the location. A review of Officer Robles' BWV, Pacific Division Frequency and the CD Incident Recall Report determined that Officer Robles went Code Six via his MDC.

Officer Antalek turned left into the driveway leading to Thornton Court. As he did so, Penny approached the driver's side of their vehicle. As captured by BWV, Officer Antalek ordered Penny to back up. Officer Robles noted that Penny was holding a bottle in his hand and advised his partner of his observations. Officer Antalek negotiated a three-point turn and pulled along the west curb of Pacific Avenue, just south of Thornton Court.

Officer Robles partially rolled down his window, at which time both officers ordered Penny to back up. Officer Antalek reversed a short distance to create space between themselves and Penny before placing their vehicle into park. According to Officer Antalek, "I attempted to back up so that my partner would be able to safely get out without him (Penny) being there. He followed my car."¹¹

Officer Antalek parked their police vehicle on Pacific Avenue, facing south. The rear portion of their vehicle was partially blocking the south end of the driveway, leading to Thornton Court. Officer Antalek exited the vehicle first in order to divert Penny's attention away from the police vehicle, to allow officer Robles the opportunity to exit safely. Officer Antalek walked north around the rear of the police vehicle, at which time Penny walked in a northerly direction. Officer Robles then exited the vehicle. As captured by BWV, Penny was holding both a beer bottle and padlock in his right hand. As Officer Robles exited the vehicle, his BWV captured Penny state, "Hey, you get to kill me today."

Note: According to Officer Antalek, Penny was holding the beer bottle in his right hand and the padlock in his left hand.

Officer Antalek ordered Penny to put the bottle down multiple times but Penny did not comply with his commands. Instead, Penny replied, "No, 'cause as soon as I do, you're going to tell me I'm arrested, right?" Officer Antalek replied, "No" and advised Penny that they just wanted to speak with him. Officer Antalek positioned himself on the north side of Thornton Court and Officer Robles positioned himself on the south side. Officer Antalek directed Officer Robles to request an additional unit and a supervisor.

¹¹ Officer Antalek's statement, Page 7, Lines 20-22.

[...]

At approximately 1749:35 hours, Officer Robles requested an additional unit and a supervisor respond to their location. Pacific Area, VBD, Sergeant I Sami Azmy, Serial No. 40667, Unit 14FB40, and Police Officer II Miguel Lara, Serial No. 42238, Unit 14FBL6, heard the broadcast and advised CD that they would respond.¹²

Pacific Area, VBD, Police Officer II Edwin Gonzalez, Serial No. 41642 and Police Officer I Sam Poursaleh, Serial No. 43545, Unit 14FB11, advised CD they were also responding to the additional unit request.¹³

Note: During the additional unit broadcast, Officer Robles did not advise the responding units that Penny was armed with a glass bottle.

As captured by BWV, Penny repeatedly asked the officers, “What’s a real blunt?” Officer Antalek continued verbalizing with Penny and advised him they just want to make sure he was okay. Officer Antalek ordered Penny to put the bottle and padlock down but he did not comply with the commands. While speaking with Penny, Officer Antalek observed a short brick wall (waist high) on the north side of Thornton Court. Officer Antalek positioned himself behind the wall, so he could utilize it as cover.

Penny turned away from the officers and walked west on Thornton Court. As he did so, Penny yelled incoherently and swung the bottle and lock back and forth above his head. Officer Antalek observed citizens standing on Thornton Court just west of Penny and was concerned for their safety. Officer Antalek directed the citizens to go inside their residence. According to Officer Antalek, some of the citizens elected to remain outside.

Officer Antalek wanted to keep Penny away from the beach, where there was heavy pedestrian traffic. Therefore, Officers Antalek and Robles walked slowly behind Penny. Officer Antalek walked along the north side of Thornton Court while Officer Robles

¹² Sergeant Azmy, 8 years 7 months with the Department, 41 years of age, 5 feet 9 inches tall, 200 pounds. Officer Lara, 3 years 11 months with the Department, 27 years of age, 6 feet tall, 160 pounds. Sergeant Azmy and Officer Lara were wearing their ballistic vests and carrying Department-approved pistols, their TASER, canisters of OC Spray, HRDs and wearing BWV. In addition, Sergeant Azmy carried collapsible baton and one pair of handcuffs. Officer Lara carried two pairs of handcuffs. Their PR-24’s were stored within their police vehicle.

¹³Officer Gonzalez, 5 years 3 months with the Department, 27 years of age, 6 feet tall, 240 pounds. Officer Poursaleh, 1 year four months with the Department, 26 years of age, 6 feet 1 inch, 200 pounds. Officers Gonzalez and Poursaleh were both wearing their ballistic vests and carrying Department-approved pistols, their TASER, canisters of OC Spray, HRDs, collapsible batons and wearing BWV. Officer Gonzalez carried one pair handcuffs and Officer Poursaleh carried two pairs. Officers Gonzalez and Poursaleh’s PR-24s were stored in their police vehicle.

walked along the south side. According to Officer Antalek, “So we’re only a block...a block or two from the beach. I didn’t want him to go on the beach and do anything there, hurt anybody, hurt the guys that were...the civilians that were on Thornton. So just having him focus on me, come towards us.”¹⁴

After walking a short distance, Penny turned around and walked east toward Officer Antalek. Officer Antalek unholstered his TASER with his right hand, held it in a one-hand shooting position and pointed the TASER in a westerly direction toward Penny. Nearly simultaneously, Officer Robles unholstered his pistol which he held in a two-hand, low-ready shooting position, with the muzzle pointed in a northwesterly direction, toward Penny. According to Officer Robles, “I unholster because I thought the subject is close enough to my partner where he can throw the bottle and cause him injury.”¹⁵

Officer Antalek stepped back in a southeasterly direction and yelled, “Hey, put the bottle down, put the bottle down. I’ll tase you.” Penny replied, “Don’t follow me! You’ll tase me? You think that hurts?” and walked past Officer Antalek, toward Pacific Avenue as Officer Antalek redeployed south.

[...]

Penny then walked west on Thornton Court and proceeded to pace back and forth. Once Penny backed away from Officer Antalek, Officer Robles holstered his pistol. Officer Antalek continued giving commands to Penny to drop the bottle and directed Officer Robles to request a back-up.

At approximately 1750:15 hours, Officer Robles broadcast a back-up request and retrieved a 40-millimeter Less Lethal Launcher from the center console of his police vehicle, which was parked directly behind him. Officers Antalek and Robles were still in line of sight of one another as he did so. Officer Robles loaded the 40-millimeter launcher, held it in a two-hand shooting position and pointed the muzzle in a westerly direction toward Penny. Officer Robles ordered Penny to, “Put that shit down.”¹⁶

Penny, while still holding the glass bottle in his right hand, retrieved a cardboard box from a nearby trash bin. Officers Antalek and Robles ordered Penny to put down the box, but he did not comply with their commands. Instead, he threw the box in Officer Robles’ direction. Penny then walked toward Officer Robles while holding the bottle in his right hand at waist level.

¹⁴ Officer Antalek’s statement, Page 18, Lines 15-19.

¹⁵ Officer Robles’ statement, Pages 10-11, Lines 25-2.

¹⁶ Gleaned from Officer Robles’ BWV at approximately 1751:13 hours.

Note: The cardboard box did not strike Officer Robles; however, Officer Antalek believed it struck Officer Robles in the chest.

Officer Antalek, fearing Penny was going to hit his partner with the bottle, aimed the TASER at Penny's naval area and fired the TASER in a southwesterly direction from an estimated distance of 15 feet. According to Officer Antalek, Penny was approximately 10 feet away from Officer Robles when he discharged the TASER. The TASER was ineffective against Penny. Officers Antalek and Robles both ordered Penny to get down on the ground, but he did not comply with their commands. Officer Antalek removed the TASER cartridge, in the event that a drive stun was necessary. He then holstered his TASER.¹⁷

Note: The investigation determined that Officer Antalek did not issue a full use of force warning to Penny. According to Officer Antalek, Penny's response when he informed him that he was going to be tased, indicated that Penny understood what a TASER did and what it could potentially do to him.

Officer Antalek estimated that he was approximately 10 to 12 feet away from Penny when he discharged the TASER. According to Officer Antalek, he believed the TASER was ineffective because only one dart/prong contacted Penny's chest area and the other prong missed altogether.

A check of the TASER's internal data storage device revealed one activation, approximately five seconds in duration at 1752:17 hours. The investigation determined that the time stamp on Officer Antalek's TASER device was approximately 50 seconds ahead of actual time (Addendum No. 1).

The following diagram depicts the officers' approximate positions at the time of the TASER activation, based on video analysis, interviews and physical evidence.¹⁸

As they waited for additional units to arrive at scene, Officers Antalek and Robles redeployed to a position of cover. Officer Antalek positioned himself behind the brick wall on the north side of Thornton Court, while Officer Robles positioned himself behind the metal security gate on the south side. Officer Antalek feared that Penny was going

¹⁷ Officer Antalek did not have a second TASER cartridge in his possession.

¹⁸ Consistent with standard practice, the OIG has removed the hyperlinks from this report as they would be inaccessible. The hyperlinks remain accessible in the FID report on this incident.

to throw the bottle at Officer Robles; therefore, he directed Officer Robles to deploy the 40-millimeter launcher if Penny approached him again.¹⁹

Multiple units ultimately responded to this incident, including following uniformed personnel:²⁰

Pacific Area Venice Beach Detail personnel:

- Sergeant I Ralph Ferguson, Serial No. 38565, Unit 14FB50.
- Police Officers II Blair Spraggins, Serial No. 42998 and Jonathan Concetti²¹, Serial No. 42332, Unit 14FB4.

Pacific Patrol Division personnel:

- Lieutenant I Gilberto Alonso, Serial No. 31149, Unit 14L10.
- Sergeant II Scotty Stevens, Serial No. 32499, Assistant Watch Commander.
- Sergeant I Lawrence Park, Serial No. 38015, Unit 14L50.
- Police Officers II Christopher Castro, Serial No. 42392 and Adrian Gonzalez, Serial No. 40214, Unit 14X16.²²
- Police Officers II Jose Hernandez, Serial No. 43215 and Oscar Maldonado, Serial No. 43223, Unit 14A76.
- Police Officers II Jorge Estrada, Serial No. 39492 and Sergio Graciano, Serial No. 42116, 14A11.
- Police Officers II Amjad Aziz, Serial No. 40850 and Timothy Southard, Serial No. 40929, Unit 14X26 (Investigators' Note No. 2).

At approximately 1752:10 hours, Officers Concetti and Spraggins arrived at scene and parked their vehicle on Pacific Avenue, just south of Officer Antalek's vehicle. Officer

¹⁹ Gleaned from Officer Antalek's BWV at 1751:47 hours.

²⁰ Officers Timothy Southard and Adrian Gonzalez were not witness to the Categorical Use of Force nor were they significantly involved. Therefore, they were not formally interviewed for this investigation. Officer Adrian Gonzalez heard shots only, therefore, a Heard Only Witness Form for Los Angeles Police Department (LAPD) Sworn was completed.

²¹ Officer Concetti, three years, nine months with the Department, 26 years of age, six feet tall, 215 pounds. Officer Spraggins, two years five months with the Department, 29 years of age, five feet 11 inches tall, 175 pounds. Officers Concetti and Spraggins were wearing their ballistic vests and carrying Department-approved pistols, their TASER, Hobble Restraint Devices, and wearing Body Worn Video (BWV). In addition, Officer Spraggins carried a collapsible baton and two pairs of handcuffs and Officer Concetti carried one pair of handcuffs. Officer Spraggins and Concetti's PR-24s were stored in their police vehicle along with a bean bag shotgun.

²² The OIG noted that two officers with the last name "Gonzalez" are mentioned in this report: Officer Adrian Gonzalez and Officer Edwin Gonzalez. For the remainder of the *Incident Summary* section of this report, all references to "Officer Gonzalez" refer to Officer Edwin Gonzalez.

Spraggins positioned himself on the south side of Thornton Court with Officer Robles, while Officer Concetti stood in the street on Pacific Avenue, behind Officer Antalek's vehicle. Officer Antalek advised Officers Spraggins and Concetti that he already tased Penny.²³

Nearly simultaneously, Sergeant Azmy and Officer Lara also arrived at scene. Officer Lara broadcast to CD that they were both Code Six upon arrival.

Note: According to Sergeant Azmy, he broadcast that they were Code Six. An analysis of the BWV confirmed that Officer Lara initiated the broadcast.

According to Officer Spraggins, he observed Penny holding a bottle in a raised, overhead position, as if he intended to throw or strike someone with it. Officer Spraggins believed the situation may escalate to the point where deadly force may be justified so he unholstered his pistol, which he held in a two-hand shooting position and pointed the muzzle in a westerly direction toward Penny. As captured by BWV, Officer Spraggins ordered Penny to drop the bottle multiple times. Penny replied, "No!"²⁴

Note: According to Sergeant Azmy, when he arrived at scene, Officer Spraggins was armed with a beanbag shotgun and Officer Concetti had his pistol drawn. An analysis of Sergeant Azmy's BWV determined that Officer Concetti's pistol was holstered and Officer Spraggins' pistol was drawn.²⁵

Officer Spraggins was cognizant of the background and noted that there were citizens near Penny's location. Therefore, Officer Spraggins holstered his pistol and directed Officer Robles to fire the 40-millimeter launcher at Penny. According to Officer Robles, Penny was very jumpy and kept moving back and forth, therefore, he did not fire the 40-millimeter launcher at that time.

According Officer Spraggins, he wanted to have as many less-lethal options available as possible. Therefore, he retrieved a beanbag shotgun from his vehicle and rejoined Officer Robles. Officer Spraggins chambered a round in the beanbag shotgun and Officer Robles advised him that there were citizens in Penny's background.

²³ Officer Concetti broadcast that they were Code Six at approximately 1753:20 hours.

²⁴ Gleaned from Officer Spraggins BWV at approximately 1752:27 hours.

²⁵ Gleaned from Officer Lara's BWV at approximately 1752:20 hours.

Upon exiting the vehicle, Officer Lara observed Penny holding a bottle in his hand. Officer Lara positioned himself behind the wall on the north side of Thornton Court. As captured by BWV, Officer Lara announced that Penny was holding a bottle in his hand and unholstered his pistol, which he held in his right hand. According to Officer Lara, “I observed suspect with a glass bottle in his hand, and I felt that that was a weapon that could cause great bodily injury to myself or others.”²⁶

Note: Officer Lara believed Penny was holding the bottle in his left hand. An analysis of the BWV determined that he was holding the bottle in his right hand.

Meanwhile, Sergeant Azmy approached Officer Antalek and asked, “What do we have?”²⁷ Before Officer Antalek responded, Sergeant Azmy assigned him as the designated cover/lethal officer. Officer Antalek advised Sergeant Azmy that he tased Penny, who was currently armed with a bottle. Officer Antalek believed the situation may escalate to the point where deadly force may be justified. Officer Antalek unholstered his pistol, which he held in his right hand, with the muzzle pointed toward the ground.

Note: According to Officer Antalek, he unholstered his pistol prior to back-up officers arriving at scene. A review of BWV determined that Officer Antalek’s pistol was still holstered upon their arrival.

Sergeant Azmy observed Penny holding the bottle in his right hand, in a raised position and yelling at the officers. Penny then picked up a black folding chair and held it in his left hand along his left leg. Penny’s demeanor caused Sergeant Azmy to form the opinion that he was either under the influence of narcotics and/or suffering from mental illness. According to Sergeant Azmy, the officers were not actively communicating with Penny, therefore, he proceeded to give Penny commands.²⁸

Note: A review of BWV determined that Officer Spraggins was giving commands to Penny, ordering him to get back and drop the bottle.²⁹

Sergeant Azmy was aware that less-lethal options were available, as Officer Spraggins had a beanbag shotgun and Officer Robles was armed with a 40-millimeter launcher. He then directed Officer Lara to retrieve a shield from their police vehicle. Officer Lara

²⁶ Officer Lara’s statement, Page 8, Lines 22-24.

²⁷ Gleaned from Sergeant Azmy’s BWV at approximately 1752:24 hours.

²⁸ At approximately 1752:38 hours. Sergeant Azmy ordered Penny to “*chill*.”

²⁹ Gleaned from Officer Spraggins BWV at approximately 1752:26-31 hours.

holstered his pistol and went to retrieve the shield. Sergeant Azmy was concerned about containment/vehicular traffic, therefore, advised CD that he needed units to block northbound traffic on Pacific Avenue and also on Speedway.

Sergeant Azmy reiterated to Officer Antalek that he was the designated as the lethal officer. Officer Antalek acknowledged his assignment and briefly raised his pistol to a two-hand, low-ready position, with the muzzle pointed in a westerly direction, toward Penny. Sergeant Azmy asked Officer Antalek for the circumstances of the incident. Officer Antalek walked backward (east) toward Sergeant Azmy, lowered his pistol and held it in his right hand with the muzzle pointed toward the ground. Officer Antalek advised Sergeant Azmy that he tased Penny, because Penny threw a box and approached them with a bottle.

Sergeant Azmy wanted to de-escalate the situation before Penny had the opportunity to attack the officers with the bottle. According to Sergeant Azmy, "And at the same time the officers were all focused on their assignments, the less lethal and the lethal. And nobody was talking or making contact with him (Penny), besides they failed to gain his cooperation before I arrived when they tased him."³⁰ Sergeant Azmy believed he could establish a rapport with Penny, therefore, assumed the role of contact officer.

Note: According to Sergeant Azmy, he never even considered delegating the role of contact to one of the officers at scene.

Sergeant Azmy began verbalizing with Penny and advised him that they just want to talk. Penny walked west on Thornton Court, then turned north, out of the officers' view. Shortly thereafter, Officer Lara returned with the shield and handed it to Officer Antalek, which he accepted with his left hand. According to Officer Lara, he unholstered his pistol after handing the shield to Officer Antalek and held it in a low-ready position with his finger alone the frame.

Note: The officers were unaware that Penny had an encampment/storage area that was located just west of 40 Thornton Court.

According to Officer Concetti, Penny broke the bottle prior to walking west on Thornton. An analysis of the BWV determined that Penny did not break the bottle at that time.

According to Officer Lara, this was the first time he unholstered his pistol. However, Officer Lara's BWV determined that he unholstered his pistol shortly after arriving at scene.³¹

³⁰ Sergeant Azmy's statement, Page 26, Lines 21-25.

³¹Gleaned from Officer Lara's BWV at approximately 1752:32 hours.

According to Sergeant Azmy, his priority was to ensure that Penny did not enter any of the nearby residences, jump any fences or have the opportunity to take a hostage. As captured on BWV, Sergeant Azmy stated, “We’ll just approach with this (shield). I don’t know where he’s going. We need to keep an eye on him.”³²

At approximately 1753:53 hours, Sergeant Azmy, along with Officers Lara, Antalek (lethal/shield), Robles (40-millimeter launcher), Spraggins (Beanbag Shotgun), and Concetti, walked west on Thornton Court, in an attempt to locate Penny. Sergeant Azmy walked along the north side of Thornton Court, slightly ahead of the officers, followed by Officers Antalek and Lara. Officer Antalek was holding the shield in his left hand and his pistol in his right hand, with the muzzle pointed toward the ground. Officer Lara also held his pistol in his right hand with the muzzle pointed toward the ground. Officers Concetti, Robles and Spraggins walked along the south side.

As the officers made their approach, three men were standing on the south side of Thornton Court, one of which was later identified as Witness Susser.³³ Sergeant Azmy asked the citizens if they knew Penny’s location. Two of the men pointed in a northwesterly direction. Officer Robles then directed the men to enter their respective residences.

Penny appeared on the north side of Thornton Court; still holding a bottle in his right hand. Sergeant Azmy stopped approximately 35 feet east of Penny’s location and began communicating with him. Officer Antalek positioned himself to Sergeant Azmy’s left and held the shield in a raised position.

Sergeant Azmy advised Penny that they just want to make sure he’s okay. He ordered Penny to put the bottle down, because it’s making everyone nervous. Penny replied, “As soon as I put this down, you’re going to put me in handcuffs.” Sergeant Azmy assured Penny that nobody was going to hurt him and asked him to put the bottle down. Penny picked up a makeshift slungshot, that consisted of a blue bandana tied to a metal number eight and walked to the south side of Thornton Court.³⁴

[...]

³² Gleaned from Sergeant Azmy’s BWV at approximately 1753:50 hours.

³³ The other two men were not identified during this investigation.

³⁴ A slungshot is striking weapon consisting of a small mass of metal or stone fixed on a flexible handle or strap. Possession of a slungshot is prohibited per California Penal Code Section 22210 – Control of Deadly Weapons.

Penny stood beside a wooden fence that ran north/south and divided the parking areas. Penny asked Sergeant Azmy, "What's a real blunt dude?" Sergeant Azmy then directed his officers to seek cover behind cars and/or structures. Officers Lara and Antalek redeployed north a short distance and sought cover behind a nearby vehicle. Officers Concetti, Robles and Spraggins moved a little closer to the structures located on the south side of the street. Officers Robles and Spraggins were positioned near the east side of 43 Park Avenue and Officer Concetti was positioned one house east of them.

Note: Although Officer Antalek was the designated cover/lethal officer, he holstered his pistol shortly after Sergeant Azmy directed the officers to seek cover.³⁵

During this time, a vehicle attempted to drive east on Thornton Court. Officer Concetti motioned to the driver to back up, which they did. Officer Concetti broadcast to CD, requesting the next unit at scene block eastbound traffic at the intersection of Thornton Court and Speedway. Officers Graciano and Estrada advised CD they would handle Officer Concetti's request and responded to the location Code Three.

Meanwhile, Sergeant Azmy continued to verbalize with Penny. Penny rested his right elbow on top of the wooden fence, while holding the bottle in his right hand and swinging the slungshot in his left hand. As captured by BWV, Penny was yelling at the officers incoherently and making erratic movements with his body.

According to Sergeant Azmy, he began asking questions to assist him in determining if Penny met the criteria for a potential mental evaluation hold, Welfare and Institutions Code (WIC) 5150.³⁶ Sergeant Azmy asked Penny, "Do you want to hurt yourself today?" Penny responded by aggressively swinging the bottle and appeared to lose his balance, falling on the ground just west of the wooden fence and out of the officers' view. As Penny fell, BWV captured the sound of glass breaking.³⁷

[...]

Sergeant Azmy and the officers walked a few steps west at which time Penny reappeared. Sergeant Azmy positioned himself beside the east wall of 40 Thornton Court. Penny rested his right arm on top of the wooden fence and held a piece of the broken bottle in his right hand and the slungshot in his left hand. Sergeant Azmy

³⁵ As captured by Officer Lara's BWV, Officer Antalek's pistol was still drawn at approximately 1754:41 hours. At approximately 1755:09 hours, Officer Lara's BWV captured Officer Antalek's pistol holstered.

³⁶ Per the Welfare and Institutions Code, the criteria for a 5150 hold is as follows: When any person, as a result of a mental disorder, is a danger to others, or to himself or herself, or gravely disabled.

³⁷ Gleaned from Sergeant Azmy's BWV at approximately 1755:06 hours.

ordered Penny to put the bottle down at which time Penny threw the bottle in a northeasterly direction. The bottle landed in the street and shattered, a few feet from where Penny was standing.

Sergeant Azmy stated, "Okay, good man dude." Penny then walked into the street toward the broken glass. Sergeant Azmy ordered Penny to stop, but he did not comply with the command. Officer Robles pointed the 40-millimeter launcher in Penny's direction and ordered him to back-up. Simultaneously, Officer Spraggins pointed the muzzle of the beanbag shotgun at Penny. Penny picked up a piece of the broken glass and retreated behind the wooden fence.

Sergeant Azmy provided Penny with a complete verbal use of force warning for the beanbag shotgun. Penny replied, "Nah, just kill me." Sergeant Azmy advised Penny that he does not want to kill him. Penny replied, "I don't want to be around to save the world." Sergeant Azmy attempted to establish a rapport with Penny by asking his name multiple times. Penny replied, "What's a real blunt?"

Sergeant Azmy asked Penny to put down the bottle so they could talk. Penny replied, "No, as soon as I put it down you're not going to ask me shit. You're just going to put me in handcuffs, right?" Sergeant Azmy advised Penny that they would only handcuff him while they completed their investigation and offered to take him to the hospital. During their conversation, Penny was moving erratically, swinging the glass shard and slungshot. On a few occasions, Penny struck the pavement with the slungshot, which emitted metallic sounds.³⁸

At approximately 1756:52 hours, Officers Graciano and Estrada arrived at scene and parked their vehicle on Speedway, facing north, blocking Thornton Court. They controlled vehicle and pedestrian traffic at the location.

Penny agreed to drop all the weapons if Sergeant Azmy repeated, "A real blunt is not real." In an attempt to gain Penny's compliance, Sergeant Azmy stated, "A real blunt is not real." Even though Sergeant Azmy complied with his request, Penny did not drop the glass or the slungshot.

Based on Penny's behavior, Officer Concetti formed the opinion that he was possibly under the influence of phencyclidine or methamphetamine and/or suffering from mental illness. According to Officer Concetti, "And as far as the way he was looking, it appeared that he had like agitated delirium. He was sweating, pacing back and forth, would not make eye contact, would not hold a conversation with us. We were unable to build a rapport with him."³⁹

³⁸ The sounds were captured by Sergeant Azmy's BWV at 1756:34 hours and 1757:04 hours.

³⁹ Officer Concetti's statement, Page 20, Lines 5-9.

During this time, Sergeant Park arrived at scene and took a position of cover behind a parked vehicle, to the right of Officer Lara. Officer Lara informed Sergeant Park that Penny was armed with broken glass in his right hand and a metal object (slungshot). Officer Lara then holstered his pistol.

Note: According to Sergeant Park, he went Code Six via his MDC upon arrival. A review of the CD Incident Recall Report determined that Sergeant Park did not go Code Six until the conclusion of the incident (Investigators' Note No. 3).

According to Sergeant Azmy, he believed he had sufficient units at scene and advised CD to downgrade the response of any additional responding units. After Sergeant Azmy completed his broadcast, Penny asked, "Are you calling back-up?" and walked in a northeasterly direction across Thornton Court. In response to Penny's actions, Officers Spraggins and Robles repositioned toward the north side of Thornton Court and Officer Concetti redeployed and stood beside 43 Park Avenue. According to Officer Concetti, "And at that time, we attempted to triangulate. If we had to use any force at that time, we had good - - good triangulation on the suspect."⁴⁰

Penny, who was still armed with the glass shard and slungshot, started jumping up and down and moved in Sergeant Azmy's direction. Officer Lara unholstered his pistol and took cover behind a brick wall just east of 40 Thornton Court.

Officer Spraggins yelled, "Get back, get back" to Penny. Simultaneously, Sergeant Azmy directed Officer Spraggins to fire the beanbag shotgun at Penny. Sergeant Azmy estimated that Penny got within approximately 15 to 20 feet of him .

[...]

Note: Sergeant Azmy's command to fire the beanbag shotgun was not captured by any officers BWV, due to the simultaneous commands being given to Penny.

Penny stopped advancing toward Sergeant Azmy and directed his attention toward Officers Spraggins and Robles. Penny looked in their direction and yelled, "Fuck you!" while swinging the slungshot. According to Officer Spraggins, "I did not fire because as he was advancing towards them, he did stop maybe approximately maybe like 15 -- maybe like 15 to 20 feet away, he did stop, and he slowly started backing up so I didn't fire."⁴¹

⁴⁰ Officer Concetti's statement, Page 12, Lines 13-15.

⁴¹ Officer Spraggins' statement, Page 19, Lines 5 – 9.

At approximately 1757:48 hours, Penny walked toward his encampment, which was located in the parking area, just west of 40 Thornton Court. Penny placed the glass onto the ground and picked up a wooden board. Penny gripped the slungshot in his left hand, while holding the wooden board in front of his body with both hands. Penny then walked in a southwesterly direction toward Officer Concetti.

According to Officer Concetti, "As soon as he (Penny) picked up the wooden piece and started walking towards my sergeant is when I unholstered my weapon, due to me believing the situation may arise to the point where deadly force may be justified."⁴² Officer Concetti unholstered his pistol and held it in a two-hand, low-ready position, with his index finger along the frame. Officer Concetti pointed the muzzle in a westerly direction, toward Penny. According to Officer Concetti, he did not have any immediate cover available to him.

Note: An analysis of the BWV determined that Officer Concetti unholstered his pistol as Penny was approximately halfway across Thornton Court.

As Penny crossed the street, Officers Spraggins and Robles began side stepping toward the south side of the street. Sergeant Azmy warned Penny that if he took another step he would be shot with the Beanbag Shotgun. Penny kept walking at which time Sergeant Azmy stated, "Beanbag him" Officer Spraggins replied, "Beanbag ready!"

Penny crossed to the south side of Thornton Court and positioned himself in the parking area just west of 43 Park Avenue.⁴³ Penny aggressively side stepped toward Officer Concetti, while holding the wooden board in a raised position. Penny walked to the southwest corner of the structure, looking in Officer Concetti's direction. According to Officer Concetti, Penny appeared to be utilizing the structure as cover.

Officer Concetti ordered Penny to stop and get back multiple times, but he did not comply. Instead, Penny replied, "Fuck you." As Officer Concetti repeated his command for Penny to get back, Penny yelled, "No!" and stepped toward Officer Concetti, while holding the wooden board.

According to Officer Spraggins, Penny picked up the wooden board and walked rapidly toward himself and Officers Concetti and Robles. Officer Spraggins observed Penny raise the board above his head as if he were going to swing it. According to Officer Spraggins, "And at that point, based on the - - the subject's actions and the - - the

⁴² Officer Concetti's statement, Page 13, Lines 14 – 17.

⁴³ Some of the residences located on the south side of Thornton Court have Park Avenue addresses.

immediate threat of violence, I - - I thought that the suspect needed to be hit with the - - with the beanbag.”⁴⁴ Officer Spraggins aimed the beanbag shotgun at Penny’s naval area and fired one round, also in a westerly direction from an approximate distance of 20 feet. After firing the beanbag shotgun, Officer Spraggins cycled the action, chambering a new round.

Note: Officer Spraggins estimated that Penny got within approximately 10 feet of him.

According to Officer Concetti, because Penny had cover, he believed if Penny left that cover and approached him, “It’s pretty much saying that he wants to use his weapon towards us.”⁴⁵ As Penny closed the distance toward him, Officer Concetti fired two consecutive rounds at Penny in a westerly direction from an approximately distance of approximately 12 feet. As a result, Penny sustained gunshot wounds to his left arm and left thigh; however, he remained standing.

[...]

OIG Note No. 1: *According to Officer Concetti, “And there is a little uphill incline. And that’s where I pretty much set the threshold. If he passes this, he’s -- it’s pretty much saying that he wants to use his weapon towards us, because if he backs away from his cover, he’s no longer going to dip in and out of of that. He’s coming towards us at that point. I tell him to back off two more times. He takes two more steps towards me. And he has the -- the wooden plank still elevated. And at that time is when I shot approximately two rounds”* ⁴⁶

As described by Officer Concetti, “My mindset was that he’s -- his demeanor is that he wants to hurt one of us. I’m thinking what they teach us, I know in immediate defense of life, coming toward us, I want to protect me and my officers. If you’re an officer holding a -- a shotgun or a beanbag, you don’t have access to any other tools. You don’t have that time. And in that situation, we didn’t have the distance, because we were preventing him from further maybe hurting someone or going to someone’s alley. So at that point, I was not able to transition to a Taser. The Taser was already ineffective at that point. So my mentality was I’m going to protect myself and my officers, fellow officers, from this suspect

⁴⁴ Officer Spraggins’ statement, Page 13, Lines 9 – 12.

⁴⁵ Officer Concetti’s statement, Page 14, Lines 18 – 20.

⁴⁶ Officer Concetti’s statement, Page 14, Line 15 - Page 15 Line 1.

that's been told to back off, put down a piece of wood, and he continues to charge us, leave his cover, and approach us with a wooden object in a position where he could easily swing it towards us." When he was asked whether he believed that the wooden object held by Penny could have caused great bodily injury if it hit someone, Officer Concetti replied, "Yes. Serious bodily injury like concussion, loss of consciousness, extensive -- extensive suturing. I mean, disfigurement, obviously, if you get hit with that piece of wood in the face."⁴⁷

OIG Note No. 2: *Sergeant Azmy's BWV footage shows Penny stopping his advance toward the officers and ducking behind the corner of the garage at 43 Park Avenue. Penny then holds the plank in a vertical position with both hands in front of his body, close to his chest. Approximately four seconds later, Penny takes two small steps towards Officer Concetti, at which time the OIS occurs.⁴⁸*

OIG Note No. 3: *In describing Penny's actions at the time the OIS occurred, Sergeant Park stated, "I believe he used a piece of wood to block -- to block the rounds. [...] He was holding it perpendicular. [...] Kind of like a shield."⁴⁹*

According to Officer Robles, he believed the wooden board Penny was armed with could possibly have nails protruding from it. He feared that if Penny swung the board, an officer could get stabbed by a nail. According to Officer Robles, Penny was behaving violently and made a sudden movement, appearing as if he was going to charge at them with the wooden board. Officer Robles fired one round from the 40-millimeter launcher, in a westerly direction from a distance of approximately 16 feet.

Sergeant Park yelled, "Reload, reload!" at which time Officer Robles removed the spent cartridge, dropped it on the ground and placed a fresh round in the chamber.

Note: The deployment of the Beanbag Shotgun, 40-millimeter launcher and the OIS were nearly simultaneous to one another.

Officer Robles did not provide a verbal use of force warning prior to firing the 40-millimeter launcher at Penny. According to Officer Robles, he previously heard Sergeant Azmy provide Penny with a use of force warning for either the beanbag shotgun or the 40-millimeter launcher.

⁴⁷ Officer Concetti's statement, Page 41, Line 20 - Page 42, Line 19.

⁴⁸ Sergeant Azmy's BWV at approximately 0057:59z.

⁴⁹ Sergeant Park's statement, Page 35, Lines 9-15.

Officer Robles believed the warning provided by Sergeant Azmy was sufficient.

The following diagram depicts the officers' approximate positions at the time of the OIS, as well as the 40-millimeter launcher and beanbag shotgun deployment. The diagram was based on video analysis, interviews and physical evidence.⁵⁰ Immediately following the OIS, Penny stumbled backward and retreated in a southwesterly direction. Officer Concetti verbally advised the officers at scene that an OIS occurred. Penny began walking north across Thornton Court.

Officers Graciano and Estrada were behind a structure on Speedway north of Thornton Court at the time of the OIS. Officers Graciano and Estrada did not witness the OIS, however, Officer Graciano's BWV captured the sound three consecutive shots.

OIG Note No. 4: *Officer Graciano did not turn on his BWV until after the OIS had occurred. Officer Estrada's BWV captured the sound of the shots.*

According to Sergeant Azmy, he heard two shots, nearly simultaneous to one another and believed they emitted from the beanbag shotgun and 40-millimeter launcher. Sergeant Park observed the beanbag shotgun and 40-millimeter launcher get deployed, however, did not see Officer Concetti fire his pistol. Sergeants Azmy and Park were both unaware that an OIS had occurred. Sergeant Azmy requested an officer with a TASER and advised Officer Spraggins to be prepared to fire the beanbag shotgun again. Officer Lara holstered his pistol and assumed the role of TASER officer.

Note: When directed by Sergeant Azmy to get the beanbag shotgun ready, Officer Spraggins cycled the action again, which ejected a live beanbag round onto the ground.

Officers Hernandez, Maldonado, Castro and Gonzalez arrived at scene and parked their respective vehicles on Pacific Avenue just prior to the OIS.⁵¹ Officer Maldonado retrieved their 40-millimeter launcher from his vehicle prior to exiting. Officers Hernandez, Maldonado and Gonzalez began walking toward the location as Officer Castro retrieved a Benelli 12-gauge Shotgun from his police vehicle. Shortly thereafter, their BWV captured the sound of three shots being fired. Officer Maldonado then

⁵⁰ Consistent with standard practice, the OIG has removed the hyperlinks from this report as they would be inaccessible. The hyperlinks remain accessible in the FID report on this incident.

⁵¹ Officer Maldonado broadcast to CD that they were Code Six just prior to arrival. Officers Castro and Gonzalez did not go Code Six until the conclusion of the incident.

loaded a round into the 40-millimeter launcher and positioned himself on the south side of Thornton Court with Officer Concetti.

According to Officer Castro, “As I’m retrieving my shotgun, I hear what I believe to be gunshots. So, I load a round into the chamber, and I run to where the officers are at.”⁵² As captured by BWV, Officer Castro held the shotgun at port arms and ran north on the east sidewalk of Pacific Avenue, then west on Thornton Court.

Note: According to Officer Castro, his shotgun was slung as he ran west on Thornton Court. A review of the BWV determined that he did not sling his shotgun until he arrived at the OIS scene.

At approximately 1758:15 hours, Officer Concetti broadcast a help call and advised that shots were fired.

As Penny crossed Thornton Court, he yelled and dropped the wooden board in the middle of the street. Penny then picked up the board and walked toward his encampment. Sergeant Azmy directed the officer with the beanbag (Spraggins) to get ready again, for an officer to be ready with the TASER. Sergeant Azmy then provided Penny with a verbal use of force warning for a TASER.

According to Officer Lara, as a de-escalation technique, he removed the TASER cartridge from his TASER and pulled the trigger, causing it to make a clicking sound (spark check).⁵³ While the spark check was in progress, Officer Spraggins ordered Penny to get back and drop the board multiple times, but he did not comply.

As Officer Castro proceeded west on Thornton Court, he disengaged the safety on the shotgun, then re-engaged it. According to Officer Castro, “I just - - I just double check it, make sure the safety is engaged, so I don’t have any misfires. So I disengage it to make sure it’s engaged and then I...Then I re-engage the safety.”⁵⁴ He then went to the north side of Thornton Court and advised the officers at scene that he had a shotgun in his possession.

Sergeant Park, still unaware that an OIS had occurred, picked up the discharged 40-millimeter cartridge case as well as the beanbag round and discharged beanbag shotshell. According to Sergeant Park, he recovered these items to preserve them as evidence (Investigators’ Note No. 4).

⁵² Officer Castro’s statement, Page 7, Lines 12-15.

⁵³ The sound of the TASER was captured by BWV at 1758:27 hours.

⁵⁴ Officer Castro’s statement, Page 15, Lines 6-12.

Meanwhile, Officer Castro repositioned to the south side of Thornton Court, to the left of Officer Maldonado. He then slung his shotgun over his shoulder and held it in a low-ready position with the muzzle pointed in a westerly direction.⁵⁵

Sergeant Azmy and Officer Concetti continued giving commands to Penny, ordering him to drop the board and get down on the ground. He did not comply with their commands. Sergeant Azmy advised Penny that he looked injured and wanted to take him to the hospital. Officer Concetti observed blood on Penny's left leg and assumed he was struck by the gunfire. Officer Concetti recommended that they request a Rescue Ambulance (RA) to respond to their location. It was at this approximate time that Officers Aziz and Southard arrived at the location.

At approximately 1759:17 hours, Sergeant Azmy requested a RA for Penny, advising that he was shot with a beanbag shotgun. Officer Concetti immediately informed Sergeant Azmy that an OIS occurred and Penny was shot on the leg. Sergeant Azmy advised CD that Penny sustained a gunshot wound to the leg.

Officer Hernandez positioned himself to the left of Officer Robles and unholstered his pistol. According to Officer Hernandez, "Just based on the tactical situation led me to believe the situation may escalate to the point where deadly force may be justified. The aggressive male (Penny) had a - - had an object in his hand, and the object to me, it appeared to be like scissors, and that could cause serious bodily injury or possibly death to myself or other officers."⁵⁶

Officer Hernandez initially held his pistol in his right hand with the muzzle pointed toward the ground, then transitioned to a two-hand, low-ready position, with his index finger along the frame and the muzzle pointed in a westerly direction.

Officer Spraggins ordered Penny to come out with his hands up and directed him to drop whatever was in his hands. Penny responded by throwing the slungshot into the middle of Thornton Court. Officer Spraggins stated, "Alright, now face away from us." Penny reached down and picked up an object from the ground with his right hand. Sergeant Azmy advised Penny to get down on the ground so they could get him help and provide medical attention. Penny replied, "They shot me and nothing happened homie."⁵⁷

⁵⁵ Gleaned from Sergeant Park's BWV at approximately 1759:10 hours.

⁵⁶ Officer Hernandez' statement, Page 21, Lines 17-23.

⁵⁷ Gleaned from BWV at 1800:17 hours.

Penny moved further north into his encampment and out of the officers' view. Officer Concetti ordered Penny to step out and walk toward the street. Penny did not comply with the commands. Officer Aziz approached Sergeant Park and asked if he would like a police vehicle brought to their location. Sergeant Park agreed and directed Officer Aziz to retrieve his vehicle.

Officer Aziz drove his police vehicle (Shop No. 81959) west on Thornton Court and parked near 43 Park Avenue. Officers Concetti, Maldonado and Aziz sought cover behind the driver's side portion of the vehicle. Officer Concetti held his pistol in a two-hand shooting position, with the muzzle pointed toward Penny. Officers Hernandez and Castro sought cover behind the front passenger side door of the vehicle. Officer Hernandez held his pistol in a two-hand, low-ready shooting position and pointed the muzzle in Penny's direction, while Officer Castro held the shotgun in a low-ready position.

Sergeant Azmy continued to verbalize with Penny, requesting him to walk toward the middle of Thornton Court. Penny then emerged from his encampment armed with a pair of scissors in his right hand. Officer Concetti advised the officers at scene of his observations. Officer Concetti ordered Penny to step out of the parking stall multiple times, but he did not comply.

Sergeant Azmy reiterated to Officer Concetti that he was still designated as lethal. Sergeant Park assigned Aziz and Maldonado as the arrest team and directed them to don protective gloves, which they did.⁵⁸ Sergeant Park advised Sergeant Azmy that he formed an arrest team. Penny walked further north, out of the officers' view. Officer Concetti advised the officers at scene they he could no longer see Penny from his position. Officer Concetti continued to verbalize with Penny, ordering him to step out (toward the street). During this time, Sergeant Ferguson arrived at scene and took a position behind the police vehicle. Shortly thereafter, Air 16 arrived at scene and assisted with establishing a perimeter.⁵⁹

Sergeant Park directed Officer Aziz to reposition the vehicle further west, in order to provide cover for the officers and enable them to see into Penny's encampment. Officer Aziz repositioned the vehicle further west and parked across from 40 Thornton Court. Penny was standing behind trashcans that were located along the east wall of the residence. Officer Concetti ordered Penny multiple times to step out of his encampment and walk in their direction. Penny did not comply and began pacing back and forth.

⁵⁸ The Los Angeles Police Department, Bloodborne Pathogen Exposure Protocol Field Notebook Divider, dated November 2012, described bloodborne pathogens as germs transmitted by exposure to blood or other potentially infectious body fluids. The document states the following: *Latex gloves shall be worn when contact with blood or other potentially infectious body fluids is anticipated and shall be changed after each contact.*

⁵⁹ Air 16 arrived at scene at approximately 1803:30 hours.

At approximately 1805:30 hours, Penny walked toward the street. Officer Concetti ordered him to get down on his knees, but he did not comply. Instead, Penny began walking west along the north side of Thornton Court toward Speedway. Sergeant Azmy broadcast to the unit positioned at the intersection of Thornton Court and Speedway, advising that Penny was walking in their direction.

Officer Aziz drove the police vehicle slowly in a westerly direction providing moving cover for the officers. Officer Hernandez placed his left hand on the open passenger door to hold it open and held his pistol in his right hand with the muzzle pointed toward the ground. According to Officer Hernandez, initially, Officer Aziz was driving a little too fast, therefore, he directed him to slow down. During their approach, Sergeant Azmy stated, "Let's just get him in custody then." Sergeant Azmy directed Officer Antalek to move to the front with the shield and advised all the officers to watch for crossfire. Officer Antalek held the shield in his left hand and his pistol in his right hand.

Just prior to reaching Speedway, Penny crossed to the south side of Thornton Court. Penny stood in a parking stall, just east of a garage and faced the officers. Penny was holding a piece of blue/white paper in his left hand and a small glass pipe in his right hand. Officer Aziz parked the police vehicle, diagonally, facing in a southwesterly direction, toward Penny. Penny dropped the paper and bent both elbows and placed both hands up, at shoulder level.

Sergeant Azmy ordered Penny to turn around. Penny asked, "What's a real blunt man?" then put both arms down by his sides and faced the garage. Officer Hernandez holstered his pistol and transitioned to his TASER, just in case Penny became combative. Officer Hernandez unholstered his TASER with his left hand and transitioned it into his right hand.

Officer Poursaleh approached Penny's left side, Officer Gonzalez approached Penny's right side and Officer Lara approached Penny's back. Officer Poursaleh grabbed Penny's left arm with his right hand and Penny's left wrist with his left hand. Officer Lara grabbed Penny's right wrist with his right hand and placed his left hand on Penny's upper back. Officer Gonzalez grabbed Penny's right elbow with his right hand and his right forearm with his left hand. Together, the officers pulled Penny's arms behind his back.

Note: According to Officer Maldonado, Penny's hands were on top of his head when Officers Poursaleh, Gonzalez and Lara approached Penny. A review of the BWV proved this to be incorrect, as Penny's arms were down by his sides.

Officer Maldonado, believing there were no officers on Penny's right side, slung his 40-millimeter launcher over his shoulder and approached Penny. Officer Maldonado placed his left hand on Penny's right shoulder to control his movements. Officer Lara then applied the handcuffs to Penny; right wrist followed by the left wrist.

[...]

Note: A review of the BWV determined that Officer Gonzalez was on Penny's right side, prior to Officer Maldonado approaching.

As Penny was being taken into custody, he dropped the pipe onto the ground. Officer Maldonado used his right foot to move the pipe in a northerly direction. Officers Poursaleh and Gonzalez then conducted a custodial search of Penny's person. Once Penny was in custody, Officer Hernandez holstered his TASER.

At approximately 1807:03 hours, Sergeant Azmy broadcast a Code Four and requested the RA to respond to their location. Sergeant Azmy then identified the involved officers directed Sergeant Ferguson to monitor Officer Concetti and read him the Public Safety Statement (PSS) (Investigators' Note No. 5).

Penny requested to be seated and advised the officers that he was feeling drowsy. Officers Poursaleh and Gonzalez observed the gunshot wound to Penny's left arm, however, they were unaware that he sustained a gunshot wound to his leg thigh we well.

Lieutenant Alonso and Sergeant Stevens arrived after Penny was in custody and started coordinating crime scene efforts and post categorical use of force procedures.

OIG Note No. 5: *According to Sergeant Stevens, "I decided since three of them were involved in an actual use of force, based on the preliminary information I had, prior to the OIS they had used non-lethal force, from what I understood, I decided to [...] read them their, or receive a Public Safety Statement from each one of them just in case. Read them each -- I didn't remove them from each other because I was alone and I was guarding five of them."*⁶⁰

During his FID interview, Sergeant Stevens indicated that he did not know the names of the officers from whom he took the PSSs and that he had made no record of the officers' answers to the PSS questions.

⁶⁰ Sergeant Stevens, Page 6, Line 21- Page 7, Line 4.

At approximately 1817:53 hours, the ambulance parked at the intersection of Speedway and Thornton Court. Initially, Officers Poursaleh and Gonzalez planned to walk Penny to the ambulance. As captured by BWV, Penny began yelling and appeared to get agitated. Officers Poursaleh and Gonzalez assisted Penny into a seated position. Los Angeles Fire Department (LAFD), Firefighter/Paramedics (FF/PM) Senay Teklu and Jose Paz, contacted and rendered aid to Penny at approximately 1819:05 hours.

Firefighter/Paramedic Paz requested the officers to place Penny onto their gurney and handcuff him to the rails. Officer Poursaleh placed a second pair of handcuffs on Penny's left wrist and handcuffed his wrist to the left rail. Officer Gonzalez then handcuffed Penny's right wrist to the right rail. Penny was transported to Ronald Regan UCLA Medical Center for further treatment. Officer Estrada escorted Penny in the ambulance during the transportation.⁶¹

At approximately 1833 hours, the Department Operations Center (DOC) was notified of the Categorical Use of Force (Addendum No. 2).⁶²

Force Investigation Division (FID), Detective III Luis Alarcon, Serial No. 30383, was the first representative from FID to arrive at scene at approximately 1950 hours.

Force Investigation Division, Sergeant II Richard Brunson, Serial No. 32828, reviewed the documents regarding the separation, monitoring and the admonitions not to discuss the incident prior to being interviewed by FID investigators. The investigation revealed that there were deviations from the standard protocols (Investigators' Note No. 6 and Addendum No 3).

Scene Description

The incident occurred on Thornton Court between Pacific Avenue and Speedway, in the Venice Beach Community. Thornton Court resembled an alleyway that ran east and west between Pacific Avenue and Speedway Street. It was approximately 30 feet wide and allowed vehicular travel in both directions. There were multiple carports, parking spaces and trash bins located along the street.

The surrounding area consisted of a mixture of single-family residences and multi-unit apartment buildings. The incident occurred during daylight at approximately 1758 hours. The environmental conditions were dry and sunny with clear skies.

⁶¹ During Penny's apprehension, Officers Gonzalez and Poursaleh got blood on his hands. LAFD personnel assisted them with decontamination.

⁶² The DOC Notification Log erroneously listed Lieutenant Antenucci as the FID OIC notified; however, Lieutenant Reynolds received the notification and responded to the incident.

Canvass for Witnesses

On August 14, 2019, Pacific Patrol Division and FID personnel conducted a canvass of the area for witnesses to the incident.

On September 5, 2019, FID personnel conducted an additional canvass of the area. Unless otherwise noted, the statements of all witnesses were recorded and transcribed and are contained in this report.

There were six civilian witnesses and one police officer who only heard shots. The number of shots heard by the witnesses ranged from three to five. Copies of their statement forms are in the FID casebook (Investigators' Note No. 7).⁶³

Suspect Information



John Penny was a male Black with black hair and black eyes. At the time of the incident, he was five feet, eleven inches tall, weighed approximately 145 pounds, and had a date of birth of May 12, 1982. Penny was identified by Criminal Information Index (CII) No. A21608413. He had one prior felony conviction and five prior misdemeanor convictions.

At the time of the incident, Penny was on formal probation for battery by gassing and summary probation for possession of narcotics and carrying a dirk or dagger. He had no prior contacts with the Department's Mental Evaluation Unit (Addendum No. 4).

On August 14, 2019, at approximately 2100 hours, FID's, Criminal Apprehension Team (CAT), Detectives II Jeffrey Martin, Serial No. 32877, and Joseph Kirby, Serial No. 36857 interviewed John Penny. Detective Kirby admonished Penny of his Miranda Rights. Penny waived his rights and agreed to provide a statement.

The following is a synopsis of his interview: John Penny admitted that he had a glass bottle in his hand when the officers first approached him. Penny said the second time the officers approached him, he was in the street holding a blue handkerchief in his hand. The handkerchief had a metal house number eight wrapped around it (makeshift slungshot).

According to Penny, there was space between him and the officers when he was holding the aforementioned objects in his hand. Penny said he did not attempt to hit the

⁶³ The interviews of the Heard Only witnesses were documented on Heard Only Witness Forms for Civilians. These interviews were not recorded or transcribed.

officers with any of the objects. During the interview, Penny advised the investigators that he heard voices.

Los Angeles Police Department Investigative Reports for Assault with a Deadly Weapon on a Police Officer were completed for the crimes against Officers Concetti, Antalek, and Sergeant Azmy, naming Penny as the suspect (Addendum No. 5).

Force Investigation Division, CAT, Detective II Todd Waymire, Serial No. 34200, completed an Arrest Report for John Penny, booking him under California Penal Code (PC) Section 245(C) PC – Felony Assault with a Deadly Weapon (Addendum No. 6).

On August 16, 2019, Detective Waymire presented the case to the Los Angeles County District Attorney's Office for filing consideration. Deputy District Attorney Karine Fong filed three felony counts against Penny for 69 PC – Resisting Arrest and one count of 22210 PC – Possession of a Dangerous Weapon.

A LAPD Follow-Up Investigation Report was completed with a case status of Cleared by Arrest (Addendum No. 7).

On August 30, 2019, the Preliminary Hearing was held at the Los Angeles County, Superior Court, Department No. W31. It was determined that Penny was unfit to stand trial and he was placed into Patton State Hospital for further evaluation.

Following the evaluation, on December 12, 2019, Penny pled guilty to one count of 69 PC, Resisting Arrest, and was sentenced to three years of formal probation and 241 days in county jail.

Injuries

At approximately 1802:32 hours, LAFD RA No. 62, staffed FF/PM Teklu and FF/PM Paz received an alarm to respond to Thornton Court and Pacific Avenue. At approximately 1814 hours, they arrived at scene and rendered aid to Penny. He was transported to Ronald Regan UCLA Medical Center where he was treated by Doctor Mark Morocco for through and through gunshot wounds to his left arm and left thigh as well as abrasions to his chest, left shoulder and hands.

On August 14, 2019, Penny signed a medical waiver authorizing the release of his medical records. Penny's medical records were obtained and reviewed by investigators. Penny admitted to medical staff that he uses narcotics, including methamphetamine and marijuana (Addendum No. 8).⁶⁴

⁶⁴ Gleaned from Pages 2 and 14 of Penny's medical records.

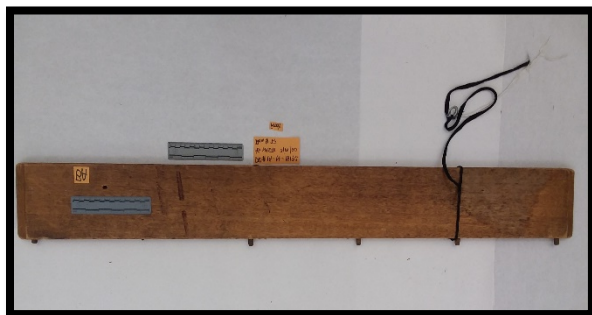
Evidence

On April 15, 2019, at approximately 0028 hours, Forensic Science Division (FSD), Firearms Analysis Unit (FAU), Criminalist II Jacob Seror, Serial No. N4571 and Criminalist I Tracy Ng, Serial No. N4952, responded to the scene and conducted an examination of the OIS scene for evidence including but not limited to ballistic impacts, trajectories, projectiles and forensic evidence.

As a result of their examination, multiple items of evidence were recovered and booked under DR No. 1914-18132. Among those items were two discharged 9-millimeter caliber cartridge casings, two fired bullet fragments, a 40-millimeter impact baton, a discharged 40-millimeter cartridge case, a discharged beanbag shotshell and a TASER cartridge with the wire and prongs attached.

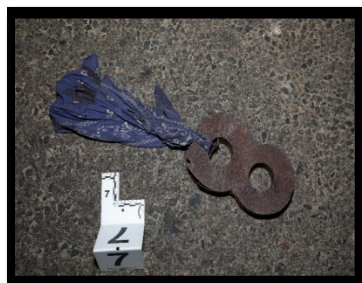
There was a total of 33 items of evidence booked in conjunction with this incident (Addendum Nos. 9 and 10).

Weapons



John Penny was armed with a wooden board and a makeshift slungshot at the time of the OIS.

The wooden board was approximately four feet long, 5 inches wide, with a depth of one inch. It was recovered from the top of a trash bin located to the rear of 40 Thornton Court.



The makeshift slungshot was comprised of a metal number eight with a blue bandana tied to it. The slungshot weighed approximately 12.83 ounces and was recovered from the street behind 37 Park Avenue.

The distance between the recovery locations for the slungshot and wooden board was approximately 11 feet.

Officer Concetti was armed with his Department-approved 9-millimeter Smith and Wesson M&P semiautomatic pistol. The pistol was carried in a Department-approved Level III retention duty holster. According to Officer Concetti, at the time of the OIS, his pistol was loaded to capacity with 18 rounds of Department-approved ammunition. Seventeen rounds were in the magazine and one round was in the chamber.

On August 15, 2019, at approximately 0025 hours, Sergeant Brunson, conducted a post-incident examination of Officer Concetti's pistol. Sergeant Brunson determined that the pistol was loaded with one round in the chamber and 15 rounds in the magazine. The pistol was loaded with a mixture of Department-approved ammunition; eight rounds of Winchester Ranger and eight rounds of Speer LE Gold Dot G2, 9-millimeter ammunition.

Sergeant Brunson also inspected two additional magazines that were carried in Officer Concetti's magazine pouch. The first magazine was loaded with seven rounds of Winchester Ranger and ten rounds of Speer LE Gold Dot G2, 9-millimeter ammunition. The second magazine was loaded with 17 rounds of Winchester Ranger 9-millimeter ammunition. The results of the magazine count were consistent with Officer Concetti firing two rounds during the OIS (Investigators' Note No. 8).

On September 16, 2019, FAU, Criminalist Seror examined and test-fired Officer Concetti's pistol. The pistol's measured trigger pull was within Department specifications (Addendum No. 11).

Sergeant Brunson verified that Officer Concetti's 9-millimeter Smith and Wesson M&P pistol was entered into the Firearm Inventory Tracking System (FITS) on December 29, 2015.

On August 20, 2019, In-Service Training Division, Department Armorer, Police Officer III Ryan Terukina, Serial No. 35666 inspected the 40-millimeter launcher and found it functioned properly and was within Department specifications (Addendum No. 12).

On August 20, 2019, Training Division, Department Armorer, Police Officer III Robert Lee, Serial No. 30836, inspected the beanbag shotgun and found it functioned properly and was also within Department specifications (Addendum No.13).

Firearms Analysis

On August 14, 2019, Criminalist Seror performed a bullet path analysis examination of the vicinity of the crime scene pursuant to the OIS. The criminalists identified four impacts with one corresponding pathway.

A Non-Penetrating impact (Impact AA) was located on the rear driveway of 39 Park Avenue. After impacting the driveway, the projectile went through the fence dividing 37 and 39 Park Avenue (Impacts AA1 and AA2) and came to rest in the left rear tire rim of a Honda Civic, California License Plate No. 7WGY848, that was parked in the rear driveway of 37 Park Avenue (Impact AA3). The impacts were consistent with a bullet

traveling from north to south, east to west and in a downward direction (Addendum No. 14)

On February 13, 2020, Criminalist Seror performed an additional bullet path analysis, to determine whether Penny's clothing and the wooden board (Item Nos. 18-22 and 27) had bullet related defects.

No defects were identified on Penny's shoes, underwear, socks or belt. Impacts were identified on the front and back of the wooden board (Impact Nos. BA and BA1) as well as the front and back, left thigh area of Penny's pants. Based on the examination of Penny's clothing, Officer Concetti's BWV and a review of Penny's medical records, Criminalist Seror concluded that Officer Concetti's first shot struck Penny's left thigh area and the second shot struck Penny's left arm (Addendum No. 15).

Note: Criminalist Seror took photographs of the second bullet path analysis and they are stored under Control No. 0620538.

The two fired bullet fragments recovered from the OIS scene (Items 5 and 6) were compared to fired bullets collected during the test fire of Officer Concetti's pistol (Item 30). The analysis determined that Item No. 5 was consistent with being fired from Officer Concetti's pistol.

Item No. 6 lacked sufficient information to determine if it was projectile related. Therefore, no further analysis was performed (Addendum No. 16).

Visual Documentation

Digital In-Car Video System (DICVS)

Multiple police vehicles equipped with DICV responded to this incident, resulting in 11 videos. Those videos were reviewed in their entirety by FID investigators and the following is a synopsis of the DICV that had significant evidentiary value:

Officers Robles and Antalek's DICV (Shop No. 80335) captured their arrival at scene and Penny standing near the intersection of Pacific Avenue and Thornton Court. The audio captured the officers first verbal communication with Penny. Based on the positioning of the vehicle, their DICV did not capture the OIS.

Officers Aziz and Southard's DICV (Shop No. 81959) captured a portion of Penny's actions following the OIS, as well as the arrest team's approach and Penny's apprehension.

Body Worn Video (BWV)

There were 19 police officers who activated their BWV at some point during this incident. Those videos were reviewed in their entirety by FID investigators. The following is a synopsis of the BWVs that had significant evidentiary value:

Officers Antalek and Robles' BWV captured the initial TASER activation as well the events leading up to the subsequent OIS and NCUOF (Beanbag Shotgun and 40-millimeter launcher). Their BWV also captured the arrest team approach and apprehension of Penny.

Officers Concetti, Spraggins, and Lara, as well as Sergeants Azmy and Park, had BWV that captured the OIS, NCUOF, apprehension of Penny and the events leading up to them.

In addition, Officers Edwin Gonzalez, Poursaleh, Hernandez, Maldonado, and Aziz' BWV captured Penny's apprehension.

Sergeant Ferguson's BWV captured Officer Concetti's PSS.

Social Media

Personnel assigned to FID's Cyber Unit monitored social media sites from the date of the incident until the submission of this investigation. No additional evidence, information or witnesses were identified via social media.

Other Department Video

None

Outside Video

Force Investigation Division investigators identified and obtained the below listed outside videos. The videos did not capture the OIS or Non-Categorical Use of Force (NCUOF).

Witness Jack Susser provided investigators with 27 Ring security video clips. The Ring video did not record audio and was motion activated at the time of the incident. The video clips captured portions of Penny's behavior prior to the officers' arrival, as well as portions of the contact between the officers and Penny prior to and after the OIS. The OIS and NCUOF were not captured in any of the clips provided by Susser. The Ring video clips are stored under Technical Investigation Division (TID) Control No. 729456.

Witness Lester provided investigators with one Ring security video clip that captured Penny and an unidentified female white, that was recorded at approximately 0948 hours, on the morning of the incident. Lester also provided cellular phone video that she recorded post OIS. Both videos were filed under TID Control No. 729444.

Photographs

Technical Investigation Division, Photographer III Francisco Govea, Serial No. N5606, responded to the scene. Photographs of the OIS scene and associated evidence are stored under TID Control Nos. 0770173 and 0770174.

Witness Amanda Lester took three photographs with her cellular phone of Penny and an unidentified female prior to the OIS. Those photographs are stored under TID Control No. 729437.

Although Witness David Cantor's security video was no longer available, 32 still photographs were captured from his surveillance system. Those photographs are stored under TID Control No. 746794.

Notifications

On August 14, 2019, at approximately 1833 hours, the DOC was notified of the Categorical Use of Force and the details of the subsequent notifications are attached (Addendum No. 2).

Personnel at Scene

Detective Alarcon was the first representative from FID to arrive at scene at approximately 1950 hours. Crime scene logs documenting additional personnel at the location are contained within the FID case file and are available for review.

Communications

A copy of the CD Incident Recall printouts related to Incident No. 190814005092, is on file at FID. Digital recordings of Pacific Division's base frequency as well as the 911 call related to this incident, are also stored at FID.

Justice System Integrity Division

This case met the criteria for presentation to the Justice System Integrity Division (JSID) and will be presented after the completion of this administrative report.

Investigators' Notes

1. Witness David Cantor was interviewed by Force Investigation Division (FID), Detectives II Alberto Rosa, Serial No. 26598 and Jennifer Kim, Serial No. 36639, on August 19, 2019. At the time of his interview, Cantor informed Detectives Rosa and Kim that his security camera captured a portion of the incident; however, it did not

capture much of the interaction between Penny and the officers. Cantor informed the investigators that his video stores for approximately 30 days.

On August 22, 2019, Detective Rosa returned to Cantor's residence with Technical Investigation Division (TID), Police Surveillance Specialist I, Brian Howard, Serial No. N5244 to obtain a copy of the security video. At that time, they discovered that Cantor's video only stored for eight days and was no longer available.

2. The investigation revealed that Officers Concetti and Spraggins were not carrying OC Spray on their persons at the time of the incident. According to Officer Concetti, the clip to his OC holster broke and he was no longer able to attach it to his belt.

According to Officer Spraggins, his OC Spray was inside of his equipment bag, within his police vehicle.

The investigation also revealed that the following personnel did not have a Side-Handle Baton or a collapsible baton (ASP) on their person at the time of the incident: Sergeant Park and Officers Concetti, Robles, Hernandez, Aziz, Lara, Maldonado, and Castro.

3. The CD Incident Recall Report depicts Sergeant Park going enroute to the location at approximately 1751 hours. According to Sergeant Park, CD raised him over the air and inquired about his status. Sergeant Park advised CD that he was Code Six on the OIS incident. The CD Incident Recall Report shows Sergeant Park Code Six at 1858 hours.

Additionally, according to Sergeant Park, at the start of his shift, he verified that his DICVS was operating properly. At approximately 1300 hours, Sergeant Park noticed that the DICVS was no longer working. Sergeant Park intended to go back to the station to exchange vehicles; however, he got busy and did not have the opportunity to do so. Therefore, he did not have a DICVS capturing his response to the location.

4. At the time of this incident, Sergeant Park had been a supervisor for approximately two months. According to Sergeant Park, he had limited experience related to Use of Force Investigations and had only handled one prior Non-Categorical Use of Force (NCUOF) Investigation.

According to Sergeant Park, his intentions were to recover the evidence (discharged 40-millimeter cartridge case, beanbag round, discharged beanbag shotshell) in order to preserve the evidence for the supervisor he believed would be completing the NCUOF Investigation. At the conclusion of the incident, Sergeant Park spoke with Pacific Area Detective II Jon Winstanley, Serial No. 36702, who advised him to put

the evidence back. According to Sergeant Park, he placed the evidence back in their approximate recovery locations.

According to Sergeant Park, if he was aware of the OIS, he would not have moved the evidence.

5. A review of Officer Concetti and Sergeant Ferguson's BWV determined that their BWVs were still recording when Sergeant Ferguson obtained the PSS.
6. The following issues were identified related to the Watch Commander's Log:
 - The Watch Commander's Log only accounted for the separation and monitoring of the following officers: Officers Concetti, Castro, Gonzalez, Maldonado, Aziz, Spraggins and Hernandez. It referenced Pacific Area, Detective III Neil Spitz, Serial No.32317, monitoring a "witness officer" and one that utilized less-lethal, but these officers were not named. Detective Spitz' log indicated that he monitored Officers Antalek and Spraggins, both of whom used less-lethal force during the incident. None of the additional involved or witnessing officers were mentioned.
 - The log only referenced Sergeant Ferguson monitoring the involved officer. It did not account for the times Detective Winstanley and Sergeant Limon monitored him. However, these times are captured on Sergeant Limon's Supervisor's Daily Report.
 - The log denoted on Page 2, that a Categorical Use of Force occurred; however, it listed the number of incidents as zero. Additionally, the box for DOC notification was not checked and no name and serial number was indicated for the notification. However, the information for the DOC notification was documented in the narrative portion of the log.
 - The log indicated that Olympic Patrol Division, Sergeant I Zackery Wechsler, Serial No. 39792, monitored Officer Spraggins at 2000 hours. Sergeant Wechsler's log indicated he took over monitoring Officer Spraggins at 2000 hours from Detective Spitz. The Watch Commander's log indicated Detective Spitz never monitored Officer Spraggins, but did indicate he monitored an officer who "used less lethal" during the incident.

The following issues were identified related to the Supervisor's logs:

- Sergeant Limon's log indicated he transferred monitoring responsibilities of Officer Concetti to Detective Winstanley at 2359 hours; however, Detective Winstanley's log did not reflect he ever monitored Officer Concetti.

- Detective Spitz' log did not indicate when he completed monitoring Officer Antalek, or if that responsibility was transferred to another supervisor.
 - Pacific Area, Detective I Scallon, Serial No. 35240, indicated that he monitored Officer Gonzalez from 2151 until transferring monitoring duties to Sergeant Miller at 2203 hours. Detective Scallon did not have dual status as a supervisor at the time of the incident, and there is no explanation for this deviation in the Watch Commander's log.
7. On August 15, 2019, FID, Detective II Alberto Rosa, Serial No. 26598, spoke with Witness Anthony Adefuye and scheduled an interview for August 19, 2019. Adefuye advised Detective Rosa that he had cell phone video of the incident and would consider providing the footage to Detective Rosa after he speaks with a lawyer.

On August 19, 2019, Adefuye called Detective Rosa and canceled their interview. Adefuye advised Detective Rosa that he is no longer interested in being interviewed for this incident.

Detective Rosa attempted to contact a witness who only identified himself as John and provided the following email address: Thabronxnative@gmail.com. Detective Rosa sent John an email requesting an interview but John never responded.

Investigators attempted to contact potential Witnesses Ani Parsegian, Carolina Jenison, David Jenison, Doug Stumvoil, Heather Kryczka, and Tina Wenz telephonically and by sending contact cards to the respective addresses. The aforementioned witnesses did not respond to the messages and/or contact cards.

8. In February of 2019, the Department began issuing newly approved Speer LE Gold Dot G2 9-millimeter ammunition to officers during qualification cycles. Per the Personnel and Training Bureau Notice, 1.12, dated May 7, 2019, once the newly approved duty ammunition is issued to an employee, it will then become the only authorized ammunition for their duty weapon. All personnel are to ensure each of their weapons, magazines and Sam Browne are not loaded with ammunition from different manufactures.

According to Officer Concetti, the last time he loaded his pistol was following a qualification cycle at Harbor Range on May 21, 2019.

On August 17, 2019, Pacific Patrol Division, Captain I Brian Morrison, Serial No. 38789 was notified regarding Officer Concetti's ammunition.

9. The investigation revealed the following BWV deviations:

- Officer Hernandez' second BWV did not capture a full two-minute buffer.
- Sergeant Park's BWV did not capture a full two-minute buffer.
- Several of Officer Pourselah's BWV did not capture a full two-minute buffer.
- Officer Aziz' BWV did not capture a full two-minute buffer.
- Officer Castro's BWV did not capture a full two-minute buffer.
- Officer Estrada's BWV did not capture a full two-minute buffer. In addition, Officer Estrada deactivated his BWV while escorting Penny to the hospital with LAFD personnel.
- Sergeant Ferguson's BWV did not capture a full two-minute buffer.
- Sergeant Ferguson did not direct Officer Concetti to turn off his BWV prior to taking a Public Safety Statement, despite Officer Concetti advising him the camera was still on. According to Sergeant Ferguson, he realized after the fact he should have directed Officer Concetti to turn the camera off.
- Officer Graciano activated his BWV late, after arriving at scene.

OIG Note No. 6: *Sergeant Stevens left the station without his BWV. According to Sergeant Stevens, "I was putting on my Sam Browne. Help call came out, and I ran off without it."*⁶⁵

On April 8, 2020, Force Investigation Group, Commanding Officer, Commander Timothy Nordquist, Serial No. 35492, informed the Director, Office of Operations, Assistant Chief Robert N. Arcos, of the issues regarding missing equipment, Code Six, Officer Concetti's ammunition, DICVS and BWV issues and deviations, moving of evidence, and Watch Commander and Supervisor's Logs.

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⁶⁵ Sergeant Stevens's statement, Page 17, Lines 24-25.

CHIEF OF POLICE REPORT⁶⁶

Chief of Police Findings

Tactics – Administrative Disapproval Sergeant Azmy. Tactical Debrief, Sergeant Park, Officers Antalek, Robles, Aziz, Concetti, Estrada, Graciano, Lara, and Spraggins.

Drawing/Exhibiting – In Policy, No Further Action, Officers Robles, Antalek, Spraggins, Lara, Concetti, Graciano, and Estrada.

Less-Lethal Use of Force – In Policy, No Further Action, Officers Antalek, Spraggins, and Robles.

Lethal Use of Force – In Policy, No Further Action, Officer Concetti.

Chief of Police Analysis

Detention

- Officers Antalek and Robles received a radio call for a screaming man. Upon arrival, they observed Penny walking in and out of traffic and pacing back and forth while talking to himself. Penny made irrational statements and was armed with a glass bottle in one hand and a padlock in the other. Due to Penny's behavior, it was unsafe for officers to approach. Officer Robles requested for additional units and both officers stood behind cover while waiting for additional units to arrive. During this time Penny began to approach Officer Antalek armed with a glass bottle and a cardboard box, despite Officers giving Penny commands to drop the weapon and to back up. As Penny threw the cardboard box at Officer Antalek, Officer Robles deployed the TASER. The TASER had no effect against Penny. As additional units arrived, Officer attempted to gain compliance with Penny through verbal commands with no effect. Penny continually ran towards officers and then backed away from officers. Penny then armed himself with a wooden board and ran towards officers with it raised over his head which resulted in an OIS. The actions of Officer Spraggins, Concetti, and Robles were appropriate and with Department policies and procedures.

Tactics

- Department policy relative to a Tactical Debrief is: *"The collective review of an incident to identify those areas where actions and decisions were effective and those areas where actions and decisions could have been improved. The intent of a Tactical Debrief is to enhance future performance."*

Department policy relative to Administrative Disapproval is: *"A finding, supported by a preponderance of the evidence that the tactics employed during a CUOF incident unjustifiably and substantially deviated from approved Department tactical training" (Los Angeles Police Department Manual, Volume 3, Section 792.05).*

⁶⁶ The information provided in this section summarizes the analysis and findings set forth in the Chief of Police's report for this case.

The evaluation of tactics requires that consideration be given to the fact that officers are forced to make split-second decisions under very stressful and dynamic circumstances. Tactics are conceptual and intended to be flexible and incident specific, which requires that each incident be looked at objectively and the tactics be evaluated based on the totality of the circumstances.

Tactical De-Escalation

- *Tactical de-escalation involves the use of techniques to reduce the intensity of an encounter with a suspect and enable an officer to have additional options to gain voluntary compliance or mitigate the need to use a higher level of force while maintaining control of the situation.*

Tactical De-Escalation Techniques

- **Planning**
- **Assessment**
- **Time**
- **Redeployment and/or Containment**
- **Other Resources**
- ***Lines of Communication (Use of Force - Tactics Directive No. 16, October 2016, Tactical De-Escalation Techniques***

Tactical de-escalation does not require that an officer compromise his or her safety or increase the risk of physical harm to the public. De-escalation techniques should only be used when it is safe and prudent to do so.

Planning – Officers Antalek and Robles had worked together one time in the past and had discussed general tactics, contact and cover roles, as well as various use of force situations. During the officers' discussions regarding tactics, Officer Antalek was the designated lethal cover officer while Officer Robles was designated as the less-lethal cover officer. After making contact with Penny, Officer Antalek deployed his TASER while Officer Robles deployed his 40mm LLL. Officers Spraggins and Concetti had worked together for approximately four months and discussed contact and cover roles, with Officer Spraggins generally designated as the contact and less-lethal cover officer and Officer Concetti as the lethal cover officer. When Officers Spraggins and Concetti arrived at scene, they observed that Officer Robles had already deployed a 40mm LLL. Officer Spraggins subsequently deployed a Beanbag Shotgun and attempted to verbalize with Penny in an attempt to have Penny to drop the glass bottle and slungshot he was holding in his hands.

While the officers planned for their initial response to the incident, the Chief would have preferred that the officers discussed additional tactical plans, such as vehicle placement, utilizing their police vehicle for cover when there is lack of available cover, establishing a perimeter, and requesting an air unit in order to more thoroughly prepare for additional outcomes.

Sergeant Azmy arrived at the location and took over the role of contact officer, verbally communicating with Penny. During this time, there were sufficient personnel to delegate this role so as to allow Sergeant Azmy to focus on planning and managing the incident. Due to Penny's erratic behavior and movements within the street, the officers were facing with a rapidly evolving tactical incident. The incident may have benefitted from a more detailed plan for the containment of Penny and deployment of officers by Sergeant Azmy.

Assessment – Officers Antalek and Robles assessed the tactical situation immediately after observing Penny's erratic behavior as they arrived at scene. As officers attempted to park and safely deploy from their police vehicle, they observed Penny in close proximity to their police vehicle. Officer Antalek deployed from their police vehicle and distracted Penny, allowing Officer Robles to safely exit from the passenger side. Officers observed Penny speaking in an incoherent manner, his behavior was erratic and aggressive, and he was holding a glass bottle and a padlock. Officers attempted to utilize available cover and verbalize with Penny to get him to calm down and put down the glass bottle and padlock. Officer Antalek deployed his TASER and warned Penny that Officer Antalek would discharge the TASER as Penny began to approach him in an aggressive manner while holding the glass bottle. Officer Antalek activated his TASER in an attempt to de-escalate the encounter and subdue Penny who he observed raise the glass bottle in a threatening motion.

Officers Spraggins and Concetti responded to the scene and assessed the tactical situation. Officer Spraggins observed that Officer Robles had deployed a 40mm LLL and subsequently deployed a Beanbag Shotgun. Officer Concetti maintained his role as a communications officer and drew his service pistol, assuming a lethal cover role, when Penny approached Sergeant Azmy who had arrived at scene in an aggressive manner. Officers followed Penny who was moving in an unpredictable manner, at a distance, in order to contain and maintain a visual of him. Penny armed himself with a wooden board, approached to a minimal distance, and moved aggressively towards officers.

Officers Concetti (service pistol), Spraggins (Beanbag Shotgun), and Robles (40mm LLL) utilized fire control immediately after firing their weapon systems and assessed whether Penny's actions were still an imminent threat. Penny fled and was taken into custody a short time later in an area nearby the OIS.

Time – Officers Antalek and Robles after arriving at scene, observed Penny in an extremely agitated state, and attempted to verbalize with Penny to calm him down and have him drop the glass bottle that he was armed with. Officer Antalek deployed a TASER and Officer Robles deployed a 40mm LLL in order to have additional tools available to de-escalate the tactical situation. Officer Robles requested the response of additional resources. Officer Spraggins and Concetti arrived and Officer Spraggins deployed a Beanbag Shotgun as an additional

de-escalation tool to gain additional time to safely resolve the incident. Penny's behavior was erratic and unpredictable. He suddenly and without warning armed himself with a wooden board and moved within close proximity to the officers who were attempting to maintain visual of him and contain him. Penny abruptly moved towards officers in an aggressive manner while raising the wooden board above his head in a threatening motion. Penny's actions did not afford the officers any additional time to respond to his deadly actions, which reduced the time they had to respond, and limited their tactical options.

Redeployment and/or Containment – After making contact with Penny, Officers Antalek and Robles requested additional resources to respond. As Officers Antalek and Robles attempted to verbalize with Penny and de-escalate the situation, Penny proceeded to move backwards in a western direction on Thornton Court. Penny continued to move west after additional resources arrived to assist with the resolution of the incident. Officers Antalek and Robles directed concerned community members to go inside their residences and began following Penny west on Thornton Court as Sergeant Azmy attempted to communicate and gain Penny's compliance. Officers followed Penny at a distance in order to maintain visual contact and contain him within Thornton Court. Officer Concetti requested an additional unit respond to Speedway in order to block traffic as well as to prevent Penny from fleeing further west on Thornton Court. Officers Graciano and Estrada responded to the intersection of Thornton Court and Speedway and blocked traffic. Containment of Penny was maintained on Thornton Court between Pacific Avenue and Speedway. Officers Concetti, Spraggins, and Robles were unable to redeploy as Penny aggressively approached them with a wooden board due to the minimal cover that was available along Thornton Court.

The incident may have benefitted from the re-deployment of officers, or a more effective use of cover of deployed personnel. Sergeant Azmy was in the best role to do initiate such a redeployment of resources, but had continued to engage in verbal communication with Penny.

Other Resources – After making contact with Penny, Officers Antalek and Robles deployed a TASER and a 40mm LLL. Officer Robles requested additional resources respond due to Penny being non-compliant, agitated, and armed with a glass bottle. An Air Unit was requested by CD when Officer Robles requested a "back-up." Officers Spraggins and Concetti responded to assist and Officer Spraggins observed that Officer Robles had deployed a 40 mm LLL and subsequently deployed a Beanbag Shotgun to have an additional less-lethal option available. Officer Lara and Sergeant Azmy responded to the location and Officer Lara retrieved a Ballistic Shield from his vehicle and provided it to Officer Antalek who was designated the lethal cover officer. Officer Concetti requested an additional unit block the intersection of Thornton Court and Speedway Street to which Officers Graciano and Estrada responded. Penny armed himself with a wooden board, refused verbal commands to de-escalate, and raised the wooden board in a threatening manner. Officer Robles fired his 40mm LLL, Officer Spraggins fired his Beanbag Shotgun,

and Officer Concetti fired his service pistol in response to Penny's deadly threat. Sergeant Azmy requested an RA respond immediately following the OIS.

Lines of Communication – Throughout the incident, officers utilized open lines of communication. Officers Antalek and Robles initially opened lines of communication with one another as Officer Antalek and Robles determined contact and cover roles for tactical situations. Officer Antalek opened lines of communication with Penny upon arrival at scene and attempted to communicate and verbalize with Penny in order to determine what was occurring and how he could assist Penny. Officer Antalek attempted to de-escalate the situation by advising Penny to drop his glass bottle and warned Penny he would be tased. Officer Antalek opened lines of communication with Sergeant Azmy upon his arrival at scene by providing information regarding the tactical situation. Sergeant Azmy utilized open lines of communication by attempting to verbalize with Penny and direct him to comply with commands. Sergeant Azmy attempted to maintain a dialogue with Penny and verbalize with Penny in order to have Penny voluntarily submit arrest and not have any further escalation of force.

The UOFRB noted, and the Chief concurred, that due to the unpredictable and agitated demeanor of Penny throughout this incident, placed the responding officers in a situation where they were forced to react to Penny's spontaneous actions. They attempted to ascertain the reason for Penny's level of agitation and attempted to verbalize with him in order to assist him. However, based on Penny's increasingly aggressive and hostile demeanor, coupled with him being armed with a glass bottle, slungshot, and later a wooden board, officers were required to react to Penny's abrupt actions with the limited time they had. Sergeant Azmy attempted to de-escalate the encounter by verbalizing with Penny and gain his voluntary compliance, however, Penny refused to do so and suddenly armed himself with a wooden board as officers followed him at a distance. Penny aggressively approached officers and raised the wooden board above his head in a hostile manner. The aggressive actions and lethal threat presented by Penny, limited the time and options officers had, and forced them to react to the imminent lethal threat presented to them.

During the review of the incident, the following Debriefing Topics were noted:

Debriefing Point No. 1 Use of Force Warning

An officer shall, when feasible, give a verbal warning prior to using the TASER to control an individual. The warning is not required when an officer is attacked and must respond to the suspect's actions. Additionally, if a tactical plan requires the element of surprise to stabilize the situation, a warning is not required. Examples of this would be a hostage situation or a subject threatening suicide. However, officers are reminded that the surprise/tactical element must still be needed at the actual time the TASER is fired.

The verbal warning should include a command and a warning of potential consequences of the use of force. The command should be similar to “drop the weapon” or “stop what you are doing” followed by a warning similar to “or we may use the TASER, and that may cause you injury.” (Los Angeles Police Department Use of Force – Tactics Directive No. 4.5, Electronic Control Device TASER – July 2018).

An officer shall, when feasible, give a verbal warning prior to using the Beanbag Shotgun to control an individual. The warning is not required when an officer is attacked and must respond to the suspect’s actions. Additionally, if a tactical plan requires the element of surprise to stabilize the situation, a warning is not required. Examples of this would be a hostage situation or a subject threatening suicide. However, officers are reminded that the surprise/tactical element must still be needed at the actual time the Beanbag Shotgun is fired.

The verbal warning should include a command and a warning of potential consequences of the use of force. The command should be similar to “drop the weapon” or “stop what you are doing” followed by a warning similar to “or we may use the Beanbag Shotgun, and that may cause you injury.” (Los Angeles Police Department Use of Force – Tactics Directive No. 6.3, Beanbag Shotgun – July 2018).

An officer shall, when feasible, give a verbal warning prior to using the 40mm LLL to control an individual. The warning is not required when an officer is attacked and must respond to the suspect’s actions. Additionally, if a tactical plan requires the element of surprise to stabilize the situation, a warning is not required. Examples of this would be a hostage situation or a subject threatening suicide. However, officers are reminded that the surprise/tactical element must still be needed at the actual time the 40mm LLL is fired.

The verbal warning should include a command and a warning of potential consequences of the use of force. The command should be similar to “drop the weapon” or “stop what you are doing” followed by a warning similar to “or we may use the 40mm LLL, and that may cause you injury.” (Los Angeles Police Department Use of Force – Tactics Directive No. 17, 40mm Less-Lethal Launcher – July 2018).

Officers Antalek did not provide a complete Use of Force Verbal Warning prior to the deployment of his TASER. Officer Antalek stated that it was not feasible to issue a complete verbal warning due to Penny walking in his direction as Penny yelled incoherently and swung a glass bottle and padlock back and forth above his head. Officer Antalek unholstered his TASER, stepped back and stated, “Hey, put the bottle down, put the bottle down. I’ll tase you.” Penny replied, “Don’t follow me! You’ll tase me? You think that hurts?” and walked towards Officer Antalek. Officer Antalek then deployed the TASER. Officer Antalek believed his abbreviated TASER

warning was sufficient due to interpreting Penny's statement that he understood that the TASER could cause pain.

Officers shall, when feasible, give a verbal warning prior to using less-lethal force to control an individual. In this case, a complete verbal warning was not required due to Penny's actions of advancing on Officer Antalek with a glass bottle and padlock.

In this case, the UOFRB noted that the incident was unpredictable based on the Penny's erratic behavior throughout the encounter. Penny was in an extremely agitated state and was not coherent in his verbal communication. Penny was difficult to understand and did not respond to the verbal communication from the responding officers. Penny asked Officer Antalek, "You think that hurts?" which indicate to the UOFRB that Penny had some familiarity with the nature of a TASER discharge and the language used by Penny was similar to the verbal warning.

Officer Robles did not provide a complete Use of Force Verbal Warning prior to the discharging of his 40mm LLL. Just moments before Officer Robles discharged his 40mm LLL, Sergeant Azmy conducted a verbal warning with regard to the discharge of a Beanbag Shotgun to Penny. The UOFRB noted that both the Beanbag Shotgun and the 40mm LLL are less lethal devices which discharge an impact munition. The UOFRB determined that the verbal warning to Penny for the Beanbag Shotgun was sufficient, and an additional verbal warning for the 40mm LLL was not required. The UOFRB also noted that both devices were discharged nearly simultaneously.

Based upon the totality of the circumstances, the UOFRB determined, and the Chief concurred, that Officers Antalek, and Robles' actions did not substantially deviate from department standards. The Chief will direct that as a topic of discussion during the Tactical Debrief.

Debriefing Point No. 2 Utilization of Cover

*"Cover" is a term often associated with combat tactics. Under such conditions, **cover** refers to anything that may stop or deflect an opponent's weapon (e.g., brick walls, buildings, portion of the vehicle with the engine block, etc.) (California Commission on Peace Officers Standards and Training, Learning Domain 21).*

There is an equation that saves lives: Distance + Cover = Time. Time gives officers options. Time is an essential element of de-escalation as it allows officers the opportunity to communicate with the suspect, refine tactical plans, and, if necessary, call for additional resources. Entering the suspect's space prematurely may force the suspect to take action, ultimately escalating the situation. Whenever possible, officers should place an object between themselves and the suspect as cover or a barrier. A barrier could be a chain link fence, wrought iron gate, or any similar object

that prevents the assailant from reaching the officer (Los Angeles Police Department Training Bulletin, Weapons Other Than Firearms, Volume XLVI, Issue 3, October 2017).

The utilization of cover, coupled with distance, enables an officer to confront an armed suspect while simultaneously minimizing their exposure. As a result, the overall effectiveness of a tactical incident can be enhanced while also increasing an officer's tactical options. The investigation revealed that at the time of the OIS, Officers Concetti, Spraggins, and Robles did not have the benefit of cover.

Officers, when faced with a tactical incident, improve their overall safety by their ability to recognize an unsafe situation and work to ensure a successful resolution. The ability to adjust to a tactical situation ensures minimal exposure to the officers.

In this case, the UOFRB recognized that the incident was unpredictable based on the Penny's erratic behavior throughout the encounter. Penny was in an extremely agitated state and was not coherent in his verbal communication. Penny was difficult to understand and did not easily respond to the verbal communication from the responding officers. Sergeant Azmy and the responding officers, in an attempt to maintain visual contact with Penny who was moving west on Thornton Court, began to follow Penny while keeping their distance. Penny was acting in an aggressive manner and was initially armed with a glass bottle and later a slungshot and a wooden board. As Officers continued to follow Penny west of Thornton court in order to maintain their verbal communication and prevent him from endangering community members in the area, Officers Concetti, Spraggins, and Robles were moving west on the south side of the street without the benefit of cover.

The UOFRB noted the officers following Penny on the north side of the street utilized available cover and were providing "cross cover" to the officers on the south side of the street. The UOFRB considered there was minimal available cover on the street. As Officers Concetti, Spraggins, and Robles followed Penny down the street, their options for cover was limited. Also complicating the tactical decision making was that some of the available cover would have limited their view and their ability to cover various angles of the street.

The Chief would have preferred for all of the officers to maintain a position of tactical advantage by utilizing cover. The use of cover often results in officers being able to utilize various options as well as providing them with more time to make decisions in the event the suspect presents an imminent threat of death or serious bodily injury. However, this situation was fluid and rapidly evolving and that the suspect's unpredictable actions and movement dictated the officers' movement throughout the incident. Our personnel are expected to be flexible and continually assess their circumstances. In this case, once the encounter with Penny slowed down in its pace, the supervisor and officers recognized that they would benefit from cover and moved a police vehicle into a position where it could be used for cover.

Based upon the totality of the circumstances, the UOFRB determined, and the Chief concurred, that Officers Concetti, Spraggins, and Robles' actions did not deviate from department standards. The Chief will direct that as a topic of discussion during the Tactical Debrief.

Additional Tactical Debrief Topics

- **Tactical Vehicle Deployment** – In this case, Penny was moving around the area and the officers were faced with vehicular and pedestrian traffic as they were attempting to park and exit their police vehicle. The investigation revealed that Officer Antalek eventually parked the police vehicle and Penny, who was erratically moving around the area, began to approach the police vehicle. The Chief would have preferred that Officer Antalek placed his police vehicle further away from Penny, who was armed with a glass bottle and padlock, in order to give the officers additional time and distance to assess his actions. The Chief will direct this be a topic of discussion during the Tactical Debrief.
- **Simultaneous Non-Conflicting Commands** – The investigation revealed that several officers gave simultaneous commands to Penny prior to the OIS. Although the commands were non-conflicting, the officers are reminded that simultaneous commands can sometimes lead to confusion and non-compliance. The Chief will direct this to be a topic of discussion during the Tactical Debrief.
- **Back-Up vs. Additional Unit Request** – The investigation revealed that Officer Robles requested the response of an additional unit and a supervisor upon learning that Penny was armed with glass bottle and padlock, was acting erratically, and was not complying with officers' commands. In this case, although Officer Robles requested additional resources to respond to the incident, a request for backup units would have been more appropriate for this situation. Officer Robles is reminded of the importance of assessing the level of threat at an incident and appropriately communicating the immediacy of the request for resources. The Chief will direct this topic be discussed during the Tactical Debrief.
- **Target Acquisition** – The FID investigation revealed that Officer Concetti intentionally aimed his service pistol towards Penny's lower extremities when he fired two rounds at Penny striking Penny in the left arm and left thigh. Officer Concetti is reminded of the importance of target acquisition, background, sight alignment and sight picture with regards to maintaining combat shooting accuracy. The Chief will direct this to be a topic of discussion during the Tactical Debrief.
- **Designated Cover Officers (DCOs)** – The investigation revealed that Officer Antalek who was assigned as the DCO, holstered his service pistol shortly after Sergeant Azmy directed the officers to seek cover. Officer Antalek is reminded of the importance of the role of the DCO with regard to maintaining a tactical

advantage on a suspect. The Chief will direct this to be a topic of discussion during the Tactical Debrief.

- **Crossfire** – The investigation revealed that to establish containment on the incident, Officers Graciano and Estrada parked their police vehicle blocking the intersection of Thornton Court and Speedway Street, as per the request of Officer Concetti. Other officers who were deployed and following Penny were facing west on Thornton Court creating a momentary, potential crossfire situation. Officers Graciano and Estrada identified the potential crossfire issue and tactically redeployed to positions of cover. Officers Graciano and Estrada are reminded of the inherent danger of crossfire situations. The Chief will direct that this be a topic of discussion during the Tactical Debrief.
- **Code Six** – The investigation revealed that Sergeant Park and Officers Castro and Gonzalez did not go Code Six upon their arrival at the scene of the back-up request. These personnel responded to the location after other officers had begun to deploy on Penny. According to Sergeant Park, he recalled going Code Six via his MDC upon arrival. According to Officer Castro he recalled going Code Six by voicing it through his hand-held police radio after there was a Code Four. Sergeant Park and Officers Castro and Gonzalez are reminded of the importance of updating their status so that other units will know their location if they need assistance. The Chief will direct that this be a topic of discussion during the Tactical Debrief.
- **Shotgun Manipulation** – The investigation revealed that when Officer Castro deployed his Benelli M4 Shotgun, he disengaged the safety and re-engaged the safety of his Benelli M4 Shotgun not intending to shoot. The premature disengagement of the safety can lead to an unintentional discharge of a firearm. Officer Castro is reminded of the importance of proper Benelli M4 Shotgun manipulations during tactical situations. The Chief will direct this topic be discussed during the Tactical Debrief.
- **Beanbag Shotgun Manipulations** – The investigation revealed that Officer Spraggins, after discharging one Beanbag round from his Beanbag Shotgun, cycled the action of his Beanbag Shotgun which loaded an additional Beanbag round into the chamber. When directed by Sergeant Azmy to prepare the Beanbag Shotgun for deployment immediately following the OIS, Officer Spraggins cycled the action of the Beanbag Shotgun again, which ejected a live Beanbag round onto the ground. Officer Spraggins is reminded of the importance of proper Beanbag Shotgun manipulations during tactical situations. The Chief will direct this topic be discussed during the Tactical Debrief.
- **Tactical Communication** – The investigation revealed that when Officer Robles requested an additional unit, he did not advise the responding units the Penny was armed with a glass bottle or the nature of his request. Officer Robles is reminded of the importance of effective communication during a tactical incident to provide

critical basic direction, reduce possible confusion, and improve operational success. The Chief will direct this to be a topic of discussion during the Tactical Debrief.

- **TASER Deployment (Canted)** – The investigation revealed that Officer Antalek canted his TASER to the left in an approximate horizontal motion while discharging his TASER. Officer Antalek is to be reminded that the optimal TASER probe spread can only be achieved utilizing the TASER in the correct vertical position for a target that is vertical. The Chief will direct that this be a topic of discussion during the Tactical Debrief.
- **Required Equipment** – The FID investigation revealed that Officers Concetti and Spraggins were not carrying Oleoresin Capsicum (OC) Spray on their persons at the time of the incident. The FID investigation revealed that Sergeant Park, along with Officers Concetti, Robles, Lara, and Aziz did not have their side-handle baton or a collapsible baton on their persons at the time of the incident. The sergeant and officers are reminded to be in possession all of their field equipment during incidents to allow for the deployment of multiple force options to respond to the situation. The Chief will direct that this be a topic of discussion during the Tactical Debrief.

Command and Control

- *Command and Control is the use of active leadership to direct others while using available resources to coordinate a response, accomplish tasks and minimize risk. Command uses active leadership to establish order, provide stability and structure, set objectives and create conditions under which the function of control can be achieved with minimal risk. Control implements the plan of action while continuously assessing the situation, making necessary adjustments, managing resources, managing the scope of the incident (containment), and evaluating whether existing Department protocols apply to the incident.*

Command and Control is a process where designated personnel use active leadership to command others while using available resources to accomplish tasks and minimize risk. Active leadership provides clear, concise, and unambiguous communication to develop and implement a plan, direct personnel and manage resources. The senior officer or any person on scene who has gained sufficient situational awareness shall initiate Command and Control and develop a plan of action. Command and Control will provide direction, help manage resources, and make it possible to achieve the desired outcome. Early considerations of PATROL will assist with the Command and Control process (Los Angeles Police Department, Training Bulletin, Volume XLVII Issue 4, July 2018).

Line Supervision – Defined. A supervisor who has the specific responsibility of issuing directions and orders to designated subordinates shall be considered as having the duty of line supervisor and shall be held accountable for achieving conformance with the directions and orders that he/she issues (Los Angeles Police Department Manual, Volume 3, Section 135).

Incident Commander (IC) – In accordance with Department Policy, the IC sets the objectives, the strategy and directs the tactical response. Directing the tactical response means applying tactics appropriate to the strategy, assigning the right resources and monitoring performance (Los Angeles Police Department, Supervisor's Field Operations Guide, Volume 2, Emergency Operations Guide).

It is incumbent upon supervisors at the scene of a critical incident, such as this, to demonstrate and exercise supervision that is consistent with Department supervisory and tactical training.

In this incident, Sergeant Azmy responded, assumed the role of IC and contacted the primary unit, Officers Antalek and Robles. After briefly speaking to Officer Antalek and making an initial assessment of the situation, Sergeant Azmy designated officers as lethal cover, less-lethal cover. Sergeant Azmy observed that a primary contact officer had not been established and immediately took on the role of the primary communicator with Penny.

Sergeant Azmy attempted to gain the voluntary compliance of Penny by verbally communicating with him and attempting to de-escalate the situation. However, Penny's behavior and demeanor were extremely erratic and the ability to verbally communicate with him was hindered by Penny's unpredictable outbursts and movement.

The UOFRB noted that Sergeant Azmy did delegate less-lethal and lethal cover roles and had various options available. Sergeant Azmy also told officers to take cover and attempted to assess the threats to officer safety. However, the UOFRB was critical of Sergeant Azmy decision to assume the role of the primary communicator with Penny for the incident. During the incident, Sergeant Azmy also moved in front of the officers and not utilize the available cover at scene while he attempted to verbally communicate with Penny. By Sergeant Azmy taking on the primary communicator role and moving in front his officers in an effort to maintain communication with Penny who was moving in an erratic manner, his attention and focus were split and he was unable to effectively monitor and keep control of the overall tactical situation. There were sufficient resources and officers at the location to allow for Sergeant Azmy to delegate the primary communications role to another officer to allow Sergeant Azmy to focus on managing the personnel, tactics utilized, and deployed force options.

Though Sergeant Azmy actively directed resources at scene, he did not reassess the positioning of officers, or redeploy the officers to a more tactically advantages position. These actions were not reasonable and placed the officers in a situation of unnecessary risk. The Chief would have preferred that Sergeant Azmy utilize the Air Unit to provide visual containment on the suspect rather than allowing officers to remain in a position of tactical disadvantage without adequate cover.

Additionally, if further supervisory tasks were necessary, the Chief would have preferred for Sergeant Azmy to delegate those tasks to another supervisor, so he could focus his attention on the positioning and safety of the officers that responded.

As a result, the UOFRB determined, and the Chief concurred, Sergeant Azmy's decision to assume the role of the primary communicator with Penny, did not allow him to effectively maintain oversight and control of the officers that responded to this incident. In addition, Sergeant Azmy took a forward position in front of the officers and began to follow Penny which caused the officers to adjust their positioning and follow after Sergeant Azmy and Penny. By Sergeant Azmy taking on the role of the primary communicator and taking a forward position, he allowed officers to remain in a position of inadequate cover, and subsequently cause officers to be unable to hear his direction to deploy less-lethal munitions. Sergeant Azmy's actions substantially deviated, without justification, from approved Department supervisory training, and thus warranted a Tactics finding of Administrative Disapproval.

Sergeant Park was the second sergeant to respond to the incident. As Sergeant Park observed Officer Spraggins discharge the Beanbag Shotgun and Officer Robles fire the 40mm LLL, he assessed and directed Officer Spraggins and Robles to reload to ensure that Officers Spraggins and Robles had a fully operational less-lethal force option. Sergeant Park developed a tactical plan to take Penny into custody by formulating an arrest team and utilizing the police vehicle as a mobile cover.

The UOFRB deliberated in this matter and acknowledged that Sergeant Park had only been a supervisor for two months at the time of the incident. Although Sergeant Park was limited in tenure, The Chief would have preferred for Sergeant Park to take a more active leadership role and use available resources during the incident. However, due to Sergeant Park's limited experience his actions were consistent with Department supervisory training and the Chief's expectations of field supervisor during a critical incident.

Sergeant Ferguson responded to the incident after the OIS had occurred. Sergeant Ferguson coordinated with Sergeant Azmy to identify the officer involved. Sergeant Ferguson monitored Officer Concetti and obtained a PSS. Sergeant Ferguson eventually collected Officer's Concetti's BWV and monitored Officer Concetti until another Sergeant took over monitoring duties.

Sergeant Ferguson's actions were consistent with Department supervisory training and the Chief's expectations of field supervisors during a critical incident.

Lieutenant Alonso and Sergeant Stevens arrived after Penny was in custody and started coordinating crime scene efforts and post categorical use of force procedures. Lieutenant Alonso went Code Six and declared himself as the Incident Commander and utilized the established Command Post (CP). Lieutenant Alonso identified the substantially involved officers by the role they took on during the

incident, ensured that PSSs were taken from involved personnel, along with the separation and monitoring of personnel. Furthermore, Lieutenant Alonso ensured that there was an inner and out crime scene establish, a crime scene log was established, and evidence were identified and collected at scene. Sergeant Stevens responded with Lieutenant Alonso to the CP. Sergeant Stevens verified that there were outside divisional supervisors responding to the CP to help with separation and monitoring with the involved officers. Sergeant Stevens also assisted in separating, monitoring and obtaining PSSs from involved officers.

The UOFRB noted that Lieutenant Alonso and Sergeant Stevens responded to scene after the OIS had occurred and the tactical situation had concluded. UOFRB determined, and the Chief concurred, that Lieutenant Alonso and Sergeant Stevens actions with regard to protocols subsequent to a categorical use of force did not deviate from approved Department supervisory training. Therefore, the actions of Lieutenant Alonso and Sergeant Stevens were overall consistent with Department supervisory training and the Chief's expectations of field supervisors during a critical incident.

Sergeants Wechsler, Miller, and Limon, along with Detectives Spitz, Winstanley, and Scallon all responded to the incident. They maintained the separation and monitoring of involved personnel. The actions of Sergeants Wechsler, Miller, and Limon, along with Detectives Spitz, Winstanley, and Scallon were overall consistent with Department supervisory training and the Chief's expectations of field supervisors during a critical incident.

Tactical Debrief

- In conducting an objective assessment of this case, the UOFRB determined, and the Chief concurred that Sergeant Azmy's actions were a substantial deviation, without justification, from Department policy and training, thus requiring a finding of Administrative Disapproval.

In conducting an objective assessment of this case, the UOFRB determined, and the Chief concurred, that Sergeant Park, along with Officers Concetti, Spraggins, Antalek, Robles, Lara, Aziz, Graciano, and Estrada's tactics did not substantially deviate from approved Department policy and tactical training.

Each tactical incident also merits a comprehensive debriefing. In this case, there were areas identified where improvement could be made. A Tactical Debrief is the appropriate forum for the involved personnel to discuss individual actions that took place during this incident.

Although it was determined that Officer Castro would not receive formal findings, the Chief believes that he would benefit from attending the Tactical Debrief to discuss this multi-faceted incident in its entirety to enhance future performance.

Therefore, the Chief will direct that Sergeants Azmy and Park, along with Officers Concetti, Spraggins, Antalek, Robles, Lara, Aziz, Graciano, Estrada, and Castro attend a Tactical Debrief and that the specific identified topics be discussed.

Note: Additionally, the Tactical Debrief shall also include the following mandatory discussion points:

- Use of Force Policy;
- Equipment Required/Maintained;
- Tactical Planning;
- Radio and Tactical Communication (including Code Six);
- Tactical De-Escalation;
- Command and Control;
- Lethal Force.

General Training Update (GTU)

- On August 28, 2019, Officer Estrada attend a GTU. On August 29, 2019, Sergeants Azmy and Park, along with Officers Antalek, Concetti, Lara, Robles, and Spraggins attended a GTU. All mandatory topics were covered including Tactical Communication, Tactical Planning, and Contact and Cover.

Drawing/Exhibiting

- Department policy relative to drawing and exhibiting a firearm is: *“An officer’s decision to draw or exhibit a firearm should be based on the tactical situation and the officer’s reasonable belief there is a substantial risk that the situation may escalate to the point where deadly force may be justified” (Los Angeles Police Department Manual, Volume No. 1, Section 556.80)*

Officer Robles

According to Officer Robles, he observed Penny holding a glass bottle, and acting irate. Officer Robles heard Officer Antalek tell Penny to put the bottle down and to back up. As Penny began to walk towards Officer Antalek, Officer Robles drew his service pistol and held it in a two-handed, low-ready shooting position, with the muzzle pointed in a northwesterly direction, towards Penny. Officer Robles believed that Penny was close enough to Officer Antalek to cause injury if he threw the glass bottle.

Officer Robles recalled,

“He’s holding it towards the subject and he’s telling him to stop, put the bottle down, back up. The subject walks towards my partner. And I do remember unholstering at

that point. I unholster because I thought the subject is close enough to my partner where he can throw the bottle and cause him injury.”⁶⁷

“And he – he picked up the bottle over his head, and looking in my direction, and looked like he was about to throw the bottle at me.”⁶⁸

Officer Antalek

According to Officer Antalek, he had activated his TASER in an effort to de-escalate the situation, however it was ineffective against Penny. Officer Robles had deployed the 40mm LLL and Officer Antalek assumed the role of the lethal cover officer. Officer Antalek believed the situation may escalate to the point where deadly force may be justified due to Penny’s actions of throwing a box at Officer Robles and being armed with a glass bottle. Officer Antalek drew his service pistol, which he held in his right hand, with the muzzle pointed towards the ground.

Officer Antalek recalled,

“I believe my decision to unholster was I believe the situation may escalate to a point where deadly force may be justified.”⁶⁹

“I had a good cover from that point. My partner had a decent cover, and he had the 40-millimeter out. I told my partner, “Hey, if he comes back towards you, shoot him with a 40-millimeter.” I had a good cover. He was probably 10 to 15 feet, but, you know, the TASER was already ineffective. If the 40 was ineffective then, you know, this was the case, he came towards us, you know, with a bottle, tried to hit us, serious bodily injury.”⁷⁰

Officer Spraggins

According to Officer Spraggins, he observed Penny holding a glass bottle in a raised, overhead position, as if he intended to throw or strike someone with it. Officer Spraggins believed there was a substantial risk and the situation could escalate to the point where deadly force may be justified and drew his service pistol which he held in a two-hand shooting position and pointed the muzzle in a westerly direction toward Penny.

⁶⁷ Officer Robles, Page 10-11, lines 22-25 and 1-2.

⁶⁸ Officer Robles, Page 11, lines 10 – 12.

⁶⁹ Officer Antalek, Page 24, lines 15-17.

⁷⁰ Officer Antalek, Page 24, lines 18-25 and 1.

Officer Spraggins recalled,

“At that point, I unholster my weapon. Based on the tactical situation and my belief that there was a substantial risk and the situation could escalate to the point where deadly force may be justified, I unholstered and started giving commands to the suspect to drop the bottle.”⁷¹

“And he had the bottle in an overhand, or overhead position, almost like he's going to throw it or like a striking position.”⁷²

Officer Lara

A review of BWV by FID investigators determined that after positioning himself behind a wall on the north side of Thornton Court, Officer Lara drew his service pistol. Officer Lara holstered his service pistol when Sergeant Azmy directed Officer Lara to retrieve the Ballistic Shield from the trunk of the police vehicle.

Note: Officer Lara did not recall drawing his service pistol at this time.

According to Officer Lara, once he retrieved the Ballistic Shield, he handed the Ballistic Shield to Officer Antalek and drew his service pistol. Officer Lara held his service pistol in a low-ready position with his finger along the frame as Penny was still armed with a glass bottle and pacing back and forth presented an active threat to everyone at scene.

Officer Lara recalled,

“I observed suspect with a glass bottle in his hand, and I felt that that was a weapon that could cause great bodily injury to myself or others.”⁷³

Note: According to Officer Lara, he only recalled drawing his service pistol after he handed Officer Antalek the Ballistic Shield.

According to the FID investigation, Officer Lara explained to Sergeant Park, who had just arrived at scene, that Penny was armed with both a broken glass bottle in his right hand and a metal object (slungshot). Officer Lara then holstered his service pistol. A review of BWV revealed that Officer Lara later drew his service pistol and took cover behind a brick wall just east of 40 Thornton Court as Penny, who was still armed with the glass shard and slungshot, started jumping up and down and moved in Sergeant Azmy's direction.

⁷¹ Officer Spraggins, Page 9, lines 17-22.

⁷² Officer Spraggins, Page 9, line 15-17.

⁷³ Officer Spraggins, Page 9, lines 17-22.

Officer Concetti

According to Officer Concetti, he observed Penny arm himself with a piece of wood and begin walking towards Sergeant Azmy. Officer Concetti believed Penny may use the wood plank to start hitting them (officers) and the situation may escalate to the point before deadly force may be justified and drew his service pistol.

Officer Concetti recalled,

“The suspect then shifted his direction towards the other side of the alley, which was where I was standing. As soon as he picked up the wooden piece and started walking towards my sergeant is when I unholstered my weapon due to me believing the situation may arise to the point before deadly force may be justified if he approached them, started hitting them with the wooden plank or wooden piece, whatever the object was.”⁷⁴

“I assumed the low-ready position just so I don’t have- -I mean, I was- -at that point, I didn’t feel like I needed to use deadly force, so I was at the low-ready still assessing the situation, which could change at any moment.”⁷⁵

Officer Graciano

According to Officer Graciano, while conducting traffic control from his police vehicle he heard two gunshots and a supervisor broadcast a help call over the police radio. Officer Graciano continued to monitor the radio frequency and heard additional information indicating Penny was walking in the direction of where he was conducting traffic control. As Officer Graciano proceeded to tactically redeploy behind a wall he saw that Officer Estrada had deployed a 40mm LLL from their police vehicle. After seeing that his partner deployed the 40mm LLL, Officer Graciano transitioned to lethal to cover my partner as they discussed prior. Officer Graciano unholstered his service pistol because he felt that the situation might escalate to where deadly force could be used due to the possibility of the suspect running in their direction.

Officer Graciano recalled,

“At that point, I saw that he (Officer Estrada) -- he got the 40-millimeter. And that's when I turned to be -- I unholstered my firearm because I didn't know if the situation was going to escalate to a deadly force. So then he (Officer Estrada) became, as we had already discussed prior, we knew we could transition from less lethal to lethal, so when I saw that he (Officer Estrada) had the beanbag, I transitioned to lethal to cover my partner. The -- he had the 40-millimeter, and I was -- I

⁷⁴ Officer Concetti, Page 13, lines 12-19.

⁷⁵ Officer Concetti, Page 25, lines 3-7.

unholstered. At that point, I relocated and I -- to get a better cover so if the suspect came from our -- from our -- from the alley, we were able to have cover.”⁷⁶

And at that point, I unholstered, possibly the suspect running our way. And, you know, we didn't know what -- what could happen.⁷⁷

The situation might escalate to where deadly force could be used.⁷⁸

Officer Estrada

According to Officer Estrada, he heard gunfire as well as the broadcast of the sergeant of a help call, shots fired. Officer Estrada then drew his service pistol, based on hearing gunfire and believing the tactical situation may escalate to the point where deadly force may be justified.

Officer Estrada recalled,

“It was a help call. And the -- the sergeant put out a help call, shots fired, so I didn't know if the suspect was heading my direction or anything.”⁷⁹

I could see the suspect walking 20 southbound on Thornton towards our direction.”⁸⁰

The UOFRB conducted an analysis of the circumstances of the incident and the drawing/exhibiting conducted by each officer. In this case of Officers Robles, Antalek, Spraggins, Lara, Concetti the suspect was armed at various times with a bottle, slungshot, and large piece of wood. The officers drew and exhibited their service pistols in response to the suspect's action and demeanor which appeared to be agitated and aggressive, while being armed with an improvised weapon. Officer Graciano was designated as a lethal force cover officer for a less-lethal designated officer while the suspect was armed with an improvised weapon. Officer Estrada heard the sound of gunfire, as well as a broadcast for help, and believed that the situation could escalate to the point where deadly force may be justified.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that an officer with similar training and experience as Officers Antalek, Concetti, Estrada, Graciano, Lara, Robles, and Spraggins, while faced with similar circumstances, would reasonably believe that there was a substantial risk that the situation may escalate to the point where deadly force may be justified.

⁷⁶ Officer Graciano, Page 8 and 9, lines 20-25 and 1-6.

⁷⁷ Officer Graciano, Page 25, lines 5-7.

⁷⁸ Officer Graciano, Page 25, lines 9-10.

⁷⁹ Officer Lara, Page 9, lines 17-24.

⁸⁰ Officer Estrada, Page 14, lines 20-21.

Therefore, the Chief found Officers Robles, Antalek, Spraggins, Lara, Concetti, Graciano and Estrada's Drawing/Exhibiting to be In-Policy, No Further Action.

Use of Force – General⁸¹

- *It is the policy of this Department that personnel may use only that force which is "objectively reasonable" to:*
 - *Defend themselves;*
 - *Defend others;*
 - *Effect an arrest or detention;*
 - *Prevent escape; or,*
 - *Overcome resistance*

The Department examines reasonableness using Graham v. Connor and from the articulated facts from the perspective of a Los Angeles Police Officer with similar training and experience placed in generally the same set of circumstances. In determining the appropriate level of force, officers shall evaluate each situation in light of facts and circumstances of each particular case. Those factors may include, but are not limited to:

- *The seriousness of the crime or suspected offense;*
- *The level of threat or resistance presented by the subject;*
- *Whether the subject was posing an immediate threat to officers or a danger to the community;*
- *The potential for injury to citizens, officers or subjects;*
- *The risk or apparent attempt by the subject to escape;*
- *The conduct of the subject being confronted (as reasonably perceived by the officer at the time);*
- *The amount of time and any changing circumstances during which the officer had to determine the type and amount of force that appeared to be reasonable;*
- *The availability of other resources;*
- *The training and experience of the officer;*
- *The proximity or access of weapons to the subject;*
- *Officer versus subject factors such as age, size, relative strength, skill level, injury/exhaustion and number officers versus subjects; and,*
- *The environmental factors and/or other exigent circumstances (Los Angeles Police Department Manual, Volume 1, Section 556.10).*

⁸¹ Special Order No. 4, 2020 – Policy on the Use of Force - Revised, was adopted by the Department on February 5, 2020, after this incident occurred.

Less-Lethal Use of Force

- *It is the policy of this Department that personnel may use only that force which is “objectively reasonable” to:*
 - *Defend themselves;*
 - *Defend others;*
 - *Effect an arrest or detention;*
 - *Prevent escape; or,*
 - *Overcome resistance (Los Angeles Police Department Manual, Volume 1, Section 556.10).*

Whenever practicable, officers shall exercise de-escalation techniques to resolve potential use of force incidents and seek voluntary compliance from suspects/subjects. The courts have held that Less-Lethal force options are “capable of inflicting significant pain and may cause serious injury.” Therefore, consistent with the Department’s Use of Force Policy, Less-Lethal force options are only permissible when:

- *An officer reasonably believes the suspect or subject is violently resisting arrest or poses an immediate threat of violence or physical harm.*

Less-Lethal force options shall not be used for a suspect or subject who is passively resisting or merely failing to comply with commands. Verbal threats of violence or mere non-compliance by a suspect do not alone justify the use of Less-Lethal force.

An officer may use the TASER as a reasonable force option to control a suspect when the suspect poses an immediate threat to the safety of the officer or others.

The optimal range for the TASER is 7-15 feet. This range gives the most effective spread of the probes to accomplish NMI [Neuro-Muscular Incapacitation] (Los Angeles Police Department, Use of Force-Tactics Directive No. 4.5, Electronic Control Device, TASER – July 2018).

An officer may use the 40mm Less-Lethal Launcher (40mm LLL) as a reasonable force option to control a suspect when the suspect poses an immediate threat to the safety of the officer or others.

The 40mm LLL shall not be used to target the head, neck, face, eyes, or spine unless lethal force is authorized. The minimum recommended deployment range for the 40mm LLL is five feet, while the effective deployment range is up to 110 feet. Officers should always consider weapon retention principles when deploying the 40mm LLL to prevent a subject/suspect from gaining control of the launcher (Los Angeles Police Department Use of Force Tactics Directive No. 17, 40mm Less-Lethal Launcher –July 2018).

- **Officer Antalek** – TASER, one five-second activation in probe-mode.

According to Officer Antalek, he observed Penny, armed with a glass bottle in his right hand, throw a box at Officer Robles. Officer Antalek, believing Penny was going to hit his partner with the glass bottle, aimed the TASER at Penny's naval area and discharged the TASER. The TASER was ineffective against Penny.

Officer Antalek recalled,

*"He then came back at us again towards us and he removed a box from the trash, and he still had the beer bottle in his hand. And from that time he walked towards my partner with a cardboard box. He threw the box at my partner, then backed up a little. He had his hands in his side, beer bottle in his right hand, and I don't know if there's anything in his left hand. But he was about ten to twelve feet and then he began to approach my partner again, so that time I tased him."*⁸²

- **Officer Spraggins** – Beanbag Shotgun, one Beanbag Supersock round at a distance of approximately 20 feet, aimed at the naval area of Penny in a westerly direction.

According to Officer Spraggins, Penny picked up the wooden board and walked rapidly towards himself and Officers Concetti and Robles. Officer Spraggins observed Penny raise the board above his head as if Penny was going to swing it. Officer Spraggins believed Penny's actions indicated an immediate threat of violence and aimed the Beanbag Shotgun at Penny's navel area. Officer Spraggins fired one Beanbag Supersock round in order to prevent Penny's aggressive approach while Penny was armed with a wooden board.

Officer Spraggins recalled,

*"It was maybe about three feet long. Picks it up, and at this point, walks, rapidly walks over to myself, my partner, and I believe it was Officer Robles by my side. I give -- I give another notification that the beanbag is ready to be fired. The suspect takes the board and he looks like he holds it over his head like he's going to swing. I hear my partner also telling him to stop."*⁸³

*"And at that point, based on the - - the subject's actions and the - - the immediate threat of violence, I - - I thought that the suspect needed to be hit with the - - with the beanbag."*⁸⁴

⁸² Officer Antalek, Page 8-9, lines 23-25, and 1-7.

⁸³ Officer Spraggins, Page 13, Lines 1-8.

⁸⁴ Officer Spraggins, Page 13, Lines 9 – 12.

- **Officer Robles** – 40mm LLL, one eXact iMPact projectile round from an approximate distance of 16 feet in a westerly direction.

According to Officer Robles, he observed Penny arming himself again with a wood board. Officer Robles also observed Penny was armed with a metal object. Penny was not listening and would not comply with any commands. Officer Robles observed Penny by the wall of a house swinging around the wood board, acting very violently. Penny then made a sudden movement and Officer Robles believed Penny was going to charge the officers with the piece of wood. Officer Robles discharged one round from the 40mm LLL from a standing position towards Penny to prevent Penny, who was armed with a wood board, from charging towards him and other officers and striking them with the board.

Officer Robles recalled,

*"We see him by a -- by the wall of a house, and then there's an empty parking lot of another house. He's again swinging that thing around, and we're thinking, okay -- well, I'm thinking at least like if he gets close, I'm going to have to beanbag him or hit him with the 40. He's acting very violently. Sure enough, he makes a sudden movement where he -- it looks like he's going to charge us (Officers at scene) with the wooden -- with the piece of wood. And I deployed the 40."*⁸⁵

*So I see -- so he goes southbound, and he's behind the house. And he's -- again, he's yelling. He's acting irate. He seems like he's kind of ready to just do something to cause harm, because he had the wood. And to me, he was picking it up, and like he was going to charge us. And then this is what I was thinking. He was going to get it up to charge and then just start swinging. But as soon as he took the step forward, that's when I -- I deployed the 40."*⁸⁶

In this case, the UOFRB conducted a thorough review in evaluating the reasonableness of Officer's Antalek's Less-Lethal Use of Force. The UOFRB considered Officer Antalek's discharge of the TASER in this incident. The UOFRB noted Penny was in an extremely agitated state, was moving in an erratic manner, and was armed with a glass bottle in close proximity to the officers.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that an officer with similar training and experience as Officer Antalek, while faced with similar circumstances, would believe that the same application of less-lethal force would be objectively reasonable.

Therefore, the Chief found Officer Antalek's Less-Lethal Use of Force (TASER) to be objectively reasonable and In Policy, No Further Action.

⁸⁵ Officer Robles, Page 14-15, lines 18-25, and 1-2.

⁸⁶ Officer Robles, Page 26, lines 5-14.

In this case, the UOFRB conducted a thorough review in evaluating the reasonableness of Officer's Spraggin's Less-Lethal Use of Force. The UOFRB considered Officer Spraggin's discharge of the Beanbag Shotgun in this incident. The UOFRB noted Penny was in an extremely agitated and aggressive state and moving in an erratic manner, while armed with and swinging a wood board and metal object in close proximity to the officers.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that an officer with similar training and experience as Officer Spraggins, while faced with similar circumstances, would believe that the same application of less-lethal force would be objectively reasonable.

Therefore, the Chief find Officer Spraggins' Less-Lethal Use of Force (Beanbag Shotgun) to be objectively reasonable and In Policy, No Further Action.

In this case, the UOFRB conducted a thorough review in evaluating the reasonableness of Officer's Robles' Less-Lethal Use of Force. The UOFRB considered Officer Robles' discharging of the 40mm LLL in this incident. The UOFRB noted Penny was in an extremely agitated and aggressive state and moving in an erratic manner, while armed with and swinging a wood board and metal object in close proximity to the officers.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that an officer with similar training and experience as Officer Robles, while faced with similar circumstances, would believe that the same application of less-lethal force would be objectively reasonable.

Therefore, the Chief found Officer Robles' Less-Lethal Use of Force (40mm LLL) to be objectively reasonable and In Policy, No Further Action.

Lethal Use of Force

- *Law enforcement officers are authorized to use deadly force to:*
 - *Protect themselves or others from what is reasonably believed to be an imminent threat of death or serious bodily injury; or,*
 - *Prevent a crime where the subject's actions place person(s) in imminent jeopardy of death or serious bodily injury; or,*
 - *Prevent the escape of a violent fleeing felon when there is probable cause to believe the escape will pose a significant threat of death or serious bodily injury to the officer or others if apprehension is delayed. In this circumstance, officers shall, to the extent practical, avoid using deadly force that might subject innocent bystanders or hostages to possible death or injury (Los Angeles Police Department Manual, Volume No.1, Section 556.10).*

- **Officer Concetti** – 9mm caliber, two rounds, in a westerly direction from an approximate distance of 12 feet.

According to Officer Concetti, Penny was in the middle of the alley, when he observed Penny arm himself with a wooden plank. Officer Concetti perceived the wooden plank to be three to five inches wide, and six feet in length. Penny quickly moved towards Officer Concetti. Officer Concetti drew his service pistol when Penny was approximately 10 to 15 feet away from him. Officer Concetti advised Penny to, "Back off, back off." Penny proceeded to move to a position where he partially used a structure as cover. Observing this behavior by Penny, Officer Concetti stopped, and reassessed the situation. Officer Concetti gave Penny another command to back off, when Penny stated, "No," and took two steps towards Officer Concetti. Officer Concetti determined that Penny was putting all of the officers in danger and fired approximately two rounds in Penny's direction.

Officer Concetti recalled,

*"So once he got the piece of wood, he quickly moved over to my side, and that's when I told him, "Back off, back off."."*⁸⁷

*He said, "Fuck," something. I don't know what he said after that. And that's when I stopped, reassessed. He moved a little -- he moved slightly behind the cover. So at that point, I'm thinking, okay, reassess the situation, back off if you can. I told him again, "Back off, back off."*⁸⁸

And at that point, he said, "No." And that's when he took two steps towards me –

*-- and left the cover. And he passed the threshold. I determined where if he passes this, he's going to put myself and my officer with holding a beanbag, which he's not going to be able to use deadly force. He's putting us all in danger."*⁸⁹

*We advised him four different times to back off."*⁹⁰

*And at that time, that's when I fired approximately two rounds in his direction."*⁹¹

*My main purpose in using force was to stop the threat."*⁹²

⁸⁷ Officer Concetti, Page 27, lines 19-21.

⁸⁸ Officer Concetti, Page 27-28, lines 22-25, and 1-2.

⁸⁹ Officer Concetti, Page 28, lines 3-4 and 6-10.

⁹⁰ Officer Concetti, Page 28, lines 12-13.

⁹¹ Officer Concetti, Page 28, lines 15-16.

⁹² Officer Concetti, Page 29, lines 7.

*And after using my weapon, I was able to obviously see that it did stop him from advancing towards me.*⁹³

In this case, the UOFRB conducted a thorough review of the incident. During their review, the UOFRB took into consideration that the suspect's aggressive and erratic behavior coupled with not complying with commands to disarm himself with his improvised weapons of a slungshot and wooden plank. The officers' were continuously faced with a challenge of limited cover and a suspect who continued to move within the alley. The incident rapidly escalated due to Penny's actions. The UOFRB considered the minimal amount of time Officer Concetti had to make decisions based on the imminent threat posed by Penny to the officers and the surrounding beach community. The UOFRB noted that Officer Concetti articulated his perception of an immediate threat, when Penny, armed with a wooden board, ran towards the direction of Officer Concetti. This action, coupled with the numerous opportunities not taken that were presented to Penny to disarm himself, indicated to the UOFRB that Penny intended to physically harm an officer with the wooden plank.

Based on the totality of the circumstances, the UOFRB determined, and the Chief concurred, that an officer with similar training and experience as Officer Concetti, would reasonably believe Penny's actions presented an imminent threat of death or serious bodily injury and that the Use of Lethal Force would be objectively reasonable.

Therefore, the Chief found Officer Concetti's Use of Lethal Force to be In Policy, No Further Action.

Additional/Equipment

Approved Duty Ammunition – The FID investigation revealed Officer Concetti's service pistol had been loaded with a mixture of two separate Department approved duty ammunition; eight rounds of Winchester Ranger 9mm ammunition and eight rounds of Speer LE Gold Dot G2, 9mm ammunition. Officer Concetti had two additional magazines that were carried in his magazine pouches at the time of the incident. The first magazine was loaded with seven rounds of Winchester Ranger 9mm and 10 rounds of Speer LE Gold Dot G2, 9mm ammunition. The second magazine was loaded with 17 rounds of Winchester Ranger 9mm ammunition.

According to Officer Concetti, the last time he loaded his service pistol was following a qualification cycle at Harbor Range on May 21, 2019. Per Personnel and Training Bureau Notice, 1.12, dated May 7, 2019, once newly approved duty ammunition is issued to an employee, it will then become the only authorized ammunition for their duty weapon. This issue was brought to the attention of Captain S. Embrich, Serial No. 30993, Commanding Officer, Pacific Area, who advised this issue was addressed

⁹³ Officer Concetti, Page 29, lines 10-11.

through the issuance of Employee Comment Sheet, generation of a Supervisory Action Items (SAI), and an informal meeting. The Commanding Officer of Operations – West Bureau (OWB) and the Director of the Office of Operations (OO) concurred with this action. As such, the Chief deemed no further action is necessary.

Protocols Subsequent to a Categorical Use of Force – Shortly after the OIS, Sergeant Park, still unaware that an OIS had occurred, picked up the discharged 40mm LLL cartridge case as well as the Beanbag round and discharged Beanbag shotshell. Sergeant Park stated he recovered those items to preserve them as evidence for the supervisor he believed would be completing the Non Categorical Use of Force investigation. At the conclusion of the incident, Sergeant Park spoke with Detective II Jon Winstanley, Serial No. 36702, Pacific Area, who advised Sergeant Park to place the evidence back at the location where he recovered the items from. According to Sergeant Park, he placed the evidence back in their approximate recovery locations. These issues were brought to the attention of Captain Embrich who advised they were addressed through the issuance of a Notice to Correct Deficiencies, generation of a SAI, and an informal meeting. The Commanding Officer of OWB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary.

Required Equipment – The FID investigation determined that Sergeant Park and Officers Robles, Hernandez, Aziz, Lara, Maldonado, and Castro did not have their side-handle baton or a collapsible baton on their persons at the time of the incident. These issues were brought to the attention of Captain Embrich who advised they were addressed through the issuance of an Employee Comment Sheet, generation of SAI, and informal meeting with each officer. Sergeant Park received a Notice to Correct Deficiencies, generation of SAI, and informal meeting. The Commanding Officer of OWB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary.

Digital In-Car Video System (DICVS) Activation – According to Sergeant Park, at the start of his shift, he verified that his DICVS was operating properly. At approximately 1300 hours, Sergeant Park noticed that the DICVS was no longer functioning. Sergeant Park did not replace his police vehicle or have his DICVS repaired and continued on with his work shift. This issue was brought to the attention of Captain Embrich who advised that it was addressed through the issuance of an Employee Comment Sheet, generation of a SAI, and an informal meeting. The Commanding Officer of OWB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary.

Body Worn Video (BWV) Activations – The FID investigation revealed Officer Hernandez had two BWVs related to this incident. The first BWV contained the full two-minute buffer and captured Officer Hernandez responding to Officer Robles' back-up request. The first BWV ends while Officer Hernandez is observed setting up crime scene tape. The second BWV had no buffer and captured Officer Hernandez standing next to another officer who is speaking with a civilian witness.

This issue was brought to the attention of Captain Embrich who advised this deviation was addressed through the generation of a SAI. The Commanding Officer of OWB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary.

The Office of Operations conducted a random inspection of BWVs associated to Officer Hernandez from May 1, 2020 through May 31, 2020, and an inspection of BWVs from December 1, 2019 through December 31, 2019, for compliance with BWV and DICVS policies. The results of the inspection indicated buffering concerns. These identified concerns will be addressed through the issuance of an Employee Comment Sheet.

Sergeant Park did not have a full two-minute buffer of his BWV. Sergeant Park activated his BWV while driving enroute to the back-up request and had a three second buffer. The BWV ends as Sergeant Parks is in the area of the CP.

This issue was brought to the attention of Captain Embrich, who advised these deviations were addressed through the generation of a SAI and through the issuance of a Notice to Correct Deficiencies. The Commanding Officer of OWB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary.

The Office of Operations conducted a random inspection of BWVs associated to Sergeant Park from May 1, 2020 through May 31, 2020, and an inspection of BWVs from December 1, 2019 through December 31, 2019, for compliance with BWV and DICVS policies. The results of the inspection indicated no late activations or buffering concerns.

Officer Poursaleh did not have a full two-minute buffer of his BWV. Officer Poursaleh had eight BWVs related to this incident. Three of the BWVs contained the full two-minute buffer. Five of Officer Poursaleh's BWVs did not contain the full two-minute buffer and captured him canvassing the crime scene and interviewing multiple civilian witnesses.

This issue was brought to the attention of Captain Embrich who advised these deviations were addressed through the issuance of an Employee Comment Sheet and the generation of a SAI. The Commanding Officer of OWB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary.

The Office of Operations conducted a random inspection of BWVs associated to Officer Poursaleh from May 1, 2020 through May 31, 2020, and an inspection of BWVs from December 1, 2019 through December 31, 2019, for compliance with BWV and DICVS policies. The results of the inspection indicated no late activations or buffering concerns.

Officer Aziz did not have a full two-minute buffer of his BWV. Officer Aziz activated his BWV while driving enroute to the back-up request and did not have a buffer. The BWV ends as Officer Aziz is standing in the crime scene.

This issue was brought to the attention of Captain Embrich who advised this deviation was addressed through the issuance of an Employee Comment Sheet and the generation of a SAI. The Commanding Officer of OWB and the Director of the OO concurred with this action. As such, the Chief deemed no further action is necessary.

The Office of Operations conducted a random inspection of BWVs associated to Officer Aziz from May 1, 2020 through May 31, 2020, and an inspection of BWVs from December 1, 2019 through December 31, 2019, for compliance with BWV and DICVS policies. The results of the inspection indicated no late activations or buffering concerns.

Officer Castro did not have a full two-minute buffering of his BWV. Officer Castro had two BWVs related to this incident. Officer Castro's first BWV contained the full two-minute buffer and captured Officer Castro driving enroute to the back-up request. The first BWV ends when confusion occurs about a Code Four broadcast by CD for an unrelated radio call and Officer Castro ends his response. Officer Castro's second BWV contained a 36 second buffer and captured Officer Castro back enroute to the back-up request.

This issue was brought to the attention of Captain Embrich who advised that this was addressed through the issuance of an Employee Comment Sheet and the generation of a SAI. The Commanding Officer of OWB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary.

The Office of Operations conducted a random inspection of BWVs associated to Officer Castro from May 1, 2020 through May 31, 2020, and an inspection of BWVs from December 1, 2019 through December 31, 2019, for compliance with BWV and DICVS policies. The results of the inspection indicated no late activations or buffering concerns.

Officer Estrada did not have a full two-minute buffering of his BWV. Officer Estrada's BWV captured him responding in his police vehicle to the back-up request and contained a one second buffer. Officer Estrada deactivated his BWV while entering the RA to escort Penny to the hospital.

This issue was brought to the attention of Captain Embrich who advised these deviations were addressed through the issuance of an Employee Comment Sheet and the generation of a SAI. The Commanding Officer of OWB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary.

The Office of Operations conducted a random inspection of BWVs associated to Officer Estrada from May 1, 2020 through May 31, 2020, and an inspection of BWVs from

December 1, 2019 through December 31, 2019, for compliance with BWV and DICVS policies. The results of the inspection indicated buffering concerns. These identified concerns will be addressed through the issuance of a Notice to Correct Deficiencies.

Sergeant Ferguson did not have a full two-minute buffering of his BWV. Sergeant Ferguson had two BWVs related to this incident. Sergeant Ferguson's first BWV had a full two-minute buffer and captured him entering his police vehicle and ends while he is at scene, 25 seconds after he first activated. Sergeant Ferguson's second BWV contains a 15 second buffer and begins with Sergeant Ferguson crossing crime scene tape and ends after the PSS with Officer Concetti. In addition Sergeant Ferguson did not direct Officer Concetti to deactivate his BWV prior to taking a PSS from Officer Concetti, despite Officer Concetti advising Sergeant Ferguson that his BWV was still activated.

This issue was brought to the attention of Captain Embrich, who advised these deviations were addressed through the issuance of an Employee Comment Sheet, generation of a SAI, and an informal meeting. The Commanding Officer of OWB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary.

The Office of Operations conducted a random inspection of BWVs associated to Sergeant Ferguson from May 1, 2020 through May 31, 2020, and an inspection of BWVs from December 1, 2019 through December 31, 2019, for compliance with BWV and DICVS policies. The results of the inspection indicated no late activations or buffering concerns.

Officer Graciano had a late activation of his BWV. Officer Graciano's BWV contains a full two-minute buffer, but is activated after he arrived at scene and captures Officer Graciano providing traffic control.

This issue was brought to the attention of Captain Embrich, who advised this deviation was addressed through the generation of a SAI. The Commanding Officer of OWB and the Director of the OO concurred with this action. As such, the Chief deemed no further action is necessary.

The Office of Operations conducted a random inspection of BWV's associated to Officer Graciano from December 1, 2019 through December 31, 2019 for compliance with BWV and DICVS policies. Officer Graciano did not have any BWV generated from January 1, 2020 through May 31, 2020. The results of the inspection indicated late activation concerns. These identified concerns will be addressed through the issuance of a Notice to Correct Deficiencies.

Watch Commander's Daily Report – The FID investigation revealed that the Watch Commander's Daily Report for this incident contained minor deviations regarding the documentation of notifications and the separation and monitoring of officers. The Watch Commander's Daily Report only accounted for the separation and monitoring of the

following officers: Officers Concetti, Castro, Gonzalez, Maldonado, Aziz, Spraggins, and Hernandez.

The Watch Commander's Daily Report referenced supervising Detective Spitz, as monitoring a witness officer and one additional officer that utilized less-lethal force; however, these officers' names were not indicated on the Watch Commander's Daily Report. In addition, the Watch Commander's Daily Report only referenced Sergeant Ferguson as having monitored Officer Concetti. The report did not account for the times Detective Winstanley, and Sergeant Limon, monitored Officer Concetti.

The Watch Commander's Daily Report documented that a CUOF occurred; however, it listed the total number of incidents as zero. Additionally, the box for the Department Operations Center (DOC) notification was not checked and there was no name and serial number indicated for who was notified; however, the DOC notification information was documented in the narrative portion of the Watch Commander's Daily Report. The Watch Commander's Daily Report indicated that Sergeant Wechsler, monitored Officer Spraggins at 2000 hours. Sergeant Wechsler's Sergeant's Daily Report indicated he took over monitoring of Officer Spraggins at 2000 hours from Detective Spitz. However, the Watch Commander's Daily Report did not indicate that Detective Spitz had ever monitored Officer Spraggins, only that Detective Spitz had monitored an officer who used less-lethal force during the incident and also a witnessing officer.

Detective Scallon was assigned to monitor Officer Gonzalez until those monitoring duties were transferred to Sergeant Miller. Detective Scallon was not a supervising detective, nor did he have dual status as a supervisor at the time of this incident. There was no documented explanation for this deviation on the Watch Commander's Daily Report.

These issues were brought to the attention of Captain Embrich. According to Captain Embrich, Lieutenant Joseph Sanchez, Serial No. 25339, Pacific Patrol Division, should have updated the Watch Commander's Daily Report with the correct information. Sergeants Weschsler and Limon, along with Detectives Spitz, Winstanley, and Scallon should have also updated Lieutenant Sanchez of pertinent information. Captain Embrich advised that these issues were addressed through the issuance of Employee Comment Sheets, generation of SAls, and informal meetings with all of the above listed personnel. The Commanding Officer of OWB and the Director of OO concurred with these actions. As such, the Chief deemed no further action is necessary.

Supervisor's Daily Report – The FID investigation revealed that a number of the Sergeant's Daily Reports for this incident contained minor deviations regarding the documentation of notifications and the separation and monitoring of officers.

Sergeant Limon's Sergeant's Daily Report indicated he transferred monitoring responsibilities of Officer Concetti to Detective Winstanley at 2359 hours; however, Detective Winstanley's Sergeant's Daily Report did not reflect that he had ever monitored Officer Concetti.

Detective Scallon, was assigned to monitor Officer Gonzalez at 2151 hours until those monitoring duties were transferred to Sergeant Miller, at 2203 hours. Detective Scallon was not a supervising detective, nor did he have dual status as a supervisor at the time of this incident.

Detective Spitz' Sergeant's Daily Report indicated that he monitored Officers Antalek and Spraggins, both of whom used less-lethal force during the incident.⁹⁴ The Watch Commander's Daily Report referenced Detective Spitz as monitoring a witnessing officer and one officer who used less-lethal force. None of the additional involved or witnessing officers were mentioned. In addition, Detective Spitz' log did not indicate when he completed his monitoring of Officer Antalek or if that responsibility was transferred to another supervisor.

These issues were brought to the attention of Captain Embrich who advised that these issues were addressed through the issuance of Employee Comment Sheets, generation of SAI, and informal meetings with Sergeant Limon, and Detectives Scallon and Spitz. The Commanding Officer of OWB and the Director of OO concurred with these actions. As such, the Chief deemed no further action is necessary.

Profanity – The investigation revealed that Officer Robles utilized profanity while giving Penny commands to put the glass bottle down. The UOFRB considered the use of profanity and determined the utterance was a single expletive. This issue was brought to the attention of Captain B. Morrison, Serial No. 30789, Commanding Officer, Pacific Patrol Division, who addressed this issue through informal counseling. The Commanding Officer of OWB and the Director of OO concurred with this action. As such, the Chief deemed no further action is necessary.

Audio/Video Recordings

Digital In-Car Video System (DICVS) – Pacific Area police vehicles equipped with DICVS responded to this incident, resulting in 11 videos. Those videos were reviewed in their entirety by FID investigators. Officers Robles and Antalek's police vehicle captured their arrival at scene and Penny standing near the intersection. Their DICVS audio captured the officers' first verbal communication with Penny. The OIS was not captured on DICVS. Officers Aziz and Southard's police vehicle captured a portion of Penny's actions following the OIS, as well as the arrest team's approach and the apprehension of Penny.

Body Worn Video (BWV) – Multiple Pacific Area police personnel equipped with BWV responded to this incident. There were 19 police officers who activated their BWV at some point during this incident. Those videos were reviewed in their entirety by FID investigators.

⁹⁴ Detective Spitz was a detective supervisor at the time of this incident.

Officers Antalek and Robles' BWVs captured the initial TASER activation as well the events leading up to the subsequent OIS and NCUOF. Their BWVs also captured the arrest team's approach and apprehension of Penny. Sergeants Azmy and Park, as well as Officers Concetti, Spraggins, and Lara had BWV that captured the OIS, NCUOF, apprehension of Penny and the events leading up to them. Officers Gonzalez, Poursaleh, Hernandez, Maldonado, and Aziz' BWV captured Penny's apprehension.

Outside Video/Photographs – The FID investigators identified and obtained the below listed outside videos that captured portions of Penny's behavior and Penny's contact with officers prior to the OIS; however, the videos did not capture the OIS or the NCUOF.

Witness Susser's Ring video system did not record audio but captured video clips of Penny's behavior prior to the officer's arrival and portions of Penny's contact with the police officers prior to and after the OIS. The OIS and NCUOF were not captured. Witness Lester provided cellular phone video recorded post OIS and three photographs taken by cellular phone of Penny.

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INSPECTOR GENERAL REVIEW

Inspector General Analysis

Investigation Quality

- No significant issues of concern were identified in relation to investigation quality.

Training Issues

- No significant issues of concern were identified in relation to training.

Equipment Issues

- No significant issues of concern were identified in relation to equipment.

Detention

- The OIG concurs with the Chief's analysis.

Tactical De-escalation

- As discussed further in the *Inspector General Recommendations* section of this report, Officer Concetti's decision-making regarding the threat posed by Penny, and his related decision-making regarding his own position relative to Penny, was flawed, and it inappropriately escalated this incident to one in which lethal force was used. As it relates to the Department's standards regarding de-escalation, Officer Concetti stated to FID that he had pre-determined Penny's crossing of a specific "threshold" as a factor in his (Officer Concetti's) decision-making about whether to use lethal force. In formulating this determination, Officer Concetti did not make any attempt to mitigate the threat that he perceived Penny would pose, should Penny indeed cross the threshold, by redeploying to create more distance between himself and Penny. In this regard, Officer Concetti's decision-making process did not reflect an appropriate application of de-escalation principles.

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BWV and DICVS Policy Compliance

SERIAL	NAME	TIMELY BWV ACTIVATION	FULL 2-MINUTE BUFFER	BWV RECORDING OF ENTIRE INCIDENT	TIMELY DICVS ACTIVATION	DICVS RECORDING OF ENTIRE INCIDENT
38015	Park, Lawrence	Yes	No	Yes	No ⁹⁵	No
40667	Azmy, Sami	Yes	No	Yes	Yes	No
42536	Antalek, Daniel	Yes	Yes	Yes	Yes	Yes
43260	Robles, Antonio	Yes	Yes	Yes	Yes	Yes
40850	Aziz, Amjad	Yes	No	Yes	Yes	Yes
42332	Concetti, Jonathan	Yes	Yes	Yes	Yes	Yes
39492	Estrada, Jorge	Yes	No	No	Yes	Yes
42116	Graciano, Sergio	No	No	Yes	Yes	Yes
42238	Lara, Miguel	Yes	Yes	Yes	N/A	N/A
42998	Spraggins, Blair	Yes	Yes	Yes	Yes	Yes

Inspector General Recommendations

Tactics

- The OIG concurs with the Chief's findings.

Drawing/Exhibiting

- The OIG concurs with the Chief's findings.

Less-Lethal Use of Force

- The OIG concurs with the Chief's findings.

Lethal Use of Force

- *Out of Policy, Officer Concetti.*
- In its review of the use of lethal force by Officer Concetti, the OIG considered the totality of the circumstances encountered by the officer, including the following factors:
 - The incident had been ongoing for approximately 10 minutes before the OIS occurred. Officer Concetti was present at the scene for approximately 6 minutes before he fired his pistol.
 - During the time when Officer Concetti was at the scene prior to the OIS, Penny exhibited behavior consistent with being under the influence of drugs and/or suffering from mental illness. Penny was not complying with the orders given to

⁹⁵ Determined to be the result of defective DICVS equipment.

him and was behaving erratically. Penny armed himself with various items, and he repeatedly moved toward officers and then backed away from them. Penny did not harm any officers with the various improvised weapons he picked up during the course of this incident.

- There was very little cover available to officers at the location of the incident; also, there were no obstacles immediately restricting the officers' ability to move/redeploy.
- Penny moved toward Officer Concetti and then positioned himself behind the corner of the garage at 43 Park Avenue. At this time, Officer Concetti was out in the open with no cover. Officer Concetti told Penny to "get back" numerous times.
- Penny stayed behind the garage at 43 Park Avenue for approximately 4 seconds before he stepped out with the wooden board, which he held vertically in front of him and close to his chest, and took two small steps toward Officer Concetti.
- Officer Concetti did not redeploy during this portion of the incident.
- Officer Concetti had identified a threshold immediately in front of Penny's position and pre-determined that if Penny took a step across that threshold, then he (Penny) could use the wooden board against Officer Concetti and fellow officers and cause serious bodily injury. According to Officer Concetti, *"And there is a little uphill incline. And that's where I pretty much set the threshold. If he passes this, he's -- it's pretty much saying that he wants to use his weapon towards us, because if he backs away from his cover, he's no longer going to dip in and out of of that. He's coming towards us at that point. I tell him to back off two more times. He takes two more steps towards me. And he has the -- the wooden plank still elevated. And at that time is when I shot approximately two rounds."*⁹⁶
- Penny took two small steps toward Officer Concetti with the wooden board, which he (Penny) still held in a vertical position close to his own chest and with both of his hands near the middle of the plank. As the officers positioned alongside Officer Concetti discharged less-lethal rounds at Penny, Officer Concetti fired two rounds from his pistol, striking Penny in the leg and the arm.

When Penny paused for approximately 4 seconds behind the corner of the garage at 43 Park Avenue, Officer Concetti did not make any effort to redeploy despite having pre-determined that if Penny stepped over the threshold that Officer Concetti had identified, then Penny could present a threat of death or serious bodily injury to Officer Concetti and his fellow officers. The threshold identified by Officer Concetti was immediately in front of Penny's position. The factoring of this arbitrary threshold

⁹⁶ Officer Concetti's statement, Page 14, Line 15 to Page 15, Line 1.

into his decision-making as to whether and when lethal force would be warranted was not appropriate, given that Officer Concetti had the option to redeploy and, thereby, increase the distance between himself and the threat that he believed Penny might potentially pose.

Penny took two small steps toward Officer Concetti while holding the wooden board vertically in front of him. As depicted by video evidence, Penny's actions with the board at the time of the shooting (holding the board near its middle with both hands, close to his own chest) could not reasonably be perceived as an imminent threat of serious bodily injury or death. While Penny was clearly resisting arrest, and exhibiting a potential to do so violently, Officer Concetti's decision to use lethal force against him based on these actions was not objectively reasonable and violated Department policy.

A handwritten signature in black ink, appearing to read "M. P. Smith". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mark P. Smith
Inspector General